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REPORT

OF THE

TWENTY-FIFTH ANNUAL MEETING

OF THE

American Bar Association

HELD AT

SARATOGA SPRINGS, NEW YORK,

August 27, 28 and 29, 1902.

PHILADELPHIA :
DANDO PRINTING AND PUBLISHING COMPANY,
34, SOUTH THIRD STREET.
1902.

THE
TWENTY-SIXTH ANNUAL MEETING

WILL BE HELD AT

HOT SPRINGS, VIRGINIA,

*On Wednesday, Thursday and Friday,
August 26, 27 and 28, 1903.*

TRANSACTIONS
OF THE
TWENTY-FIFTH ANNUAL MEETING
OF THE
American Bar Association,
HELD AT
SARATOGA SPRINGS, NEW YORK,
AUGUST 27, 28 AND 29, 1902.

Wednesday, August 27, 1902.

The Twenty-fifth Annual Meeting of the American Bar Association met in Convention Hall, Saratoga Springs, New York, on Wednesday, August 27, 1902, at 10.30 A. M.

The meeting was called to order by Edmund Wetmore, of New York, who introduced the President, U. M. Rose, of Arkansas, who took the Chair.

The President then delivered the President's Address.

(See the Appendix.)

The President:

Gentlemen, I believe the first business in order is the nomination and election of new members.

(See List of New Members.)

The President:

There will now be a recess of five minutes, after which the roll of states will be called for the purpose of selecting and electing members of the General Council.

A recess of five minutes was then taken, after which the General Council was elected.

(See List of Officers at end of Minutes.)

The President :

Next in order will be the report of the Secretary.

John Hinkley, of Maryland, Secretary, read his report.

The President :

The usual order is, I believe, to receive the report and place it on file, and that course will be taken in this instance.

(See the Report at end of Minutes.)

The President :

The report of the Treasurer will now be presented.

Francis Rawle, of Pennsylvania, Treasurer, read his report.

The President :

The report will be received and referred to the Auditing Committee.

(See the Report at end of Minutes.)

The President :

The next in order will be the report of the Executive Committee.

The report of the Executive Committee was read by the Secretary.

The President :

The report is received and will be placed on file.

(See the Report at end of Minutes.)

A recess was taken until 8 o'clock P. M.

EVENING SESSION.

Wednesday, August 27, 1902, 8 P. M.

The President :

The meeting will come to order. I have great pleasure in introducing to you a gentleman who has occupied very high positions in his own country under her late Majesty Queen Victoria, and who is at present Parliamentary Counsel to the

Treasury. I beg leave to introduce to you Mr. M. D. Chalmers, of London, who will address you on "Codification of Mercantile Law."

Mr. Chalmers then read his paper.

(See the Appendix.)

The President:

I do not need to introduce formally a gentleman who has long been a member of our Association, and who is personally well-known to you all, and a gentleman who is well-known throughout our country to the profession. I now beg leave to introduce to you Mr. Amasa M. Eaton, of Providence, Rhode Island, who will address us on "The Origin of Municipal Incorporation in England and in the United States."

Mr. Eaton then read his paper.

(See the Appendix.)

William A. Ketcham, of Indiana:

Preparatory to a discussion of these papers, which I understand to be next in order, if it is now in order, I move that the thanks of this Association be tendered to Mr. Chalmers for the very interesting and able paper that he has so kindly given us, and upon this motion I would be glad to have a rising vote.

Martin D. Follett, of Ohio:

I second that motion.

The motion was adopted by a rising vote.

William P. Breen, of Indiana:

Mr. President, the General Council, to which was referred the resolution offered by Mr. Brewster, of Connecticut, to amend the Constitution by adding a new article, to be known as Article 12, in the following words: "The word 'person' in the second Article of the Constitution shall be interpreted to include women as well as men," reports that it has considered the subject, and that, in its opinion, it is inexpedient to adopt the same.

I move you, sir, the adoption of this report.

The motion was seconded and adopted.

The President :

Nominations of new members are in order.

New members were then elected.

(See List of New Members.)

The President :

It has been suggested that some states have members present who are not represented on the General Council. It is quite important that all of the states that have representatives here should be so represented. Therefore, if any gentleman will nominate some one from some of these states that have been omitted, he will confer a favor upon the Chair, and it will be in order.

James M. Austin, of North Dakota :

For North Dakota, I would nominate W. H. Thomas.

The President :

Are there any other nominations? If not, Mr. Thomas will be considered as the representative of North Dakota.

Irving F. Baxter, of Nebraska :

The member from Nebraska is absent, and I nominate James M. Woolworth to represent Nebraska.

The President :

If there is no objection, that nomination will stand confirmed.

The Chair finds it necessary to appoint some special committees, and will ask the Secretary to read the list of committees, namely, Committee on Auditing, Committee on Publications and Committee on Reception.

The Secretary :

The following gentlemen have been named by the President to constitute these committees :

COMMITTEE ON AUDITING TREASURER'S REPORT.

S. S. P. Patteson, of Virginia.

Chapin Brown, of District of Columbia.

COMMITTEE ON PUBLICATIONS.

Edward Q. Keasbey, of New Jersey.
William B. Hornblower, of New York.
Platt Rogers, of Colorado.
Henry Budd, of Pennsylvania.
Lunsford L. Lewis, of Virginia.

COMMITTEE ON RECEPTION.

Henry St. George Tucker, of Virginia.
M. F. Dickinson, of Massachusetts.
Lucius W. Hoyt, of Colorado.
Selden P. Spencer, of Missouri.
Merrill Moores, of Indiana.
J. Nota McGill, of District of Columbia.
F. C. Dillard of Texas.
Francis B. James, of Ohio.

The President :

Gentlemen, you have heard two very interesting papers read this evening. According to our By-laws the subjects treated of in these papers are now open for discussion.

W. H. Mackoy, of Kentucky :

I merely want to say that the Court of Appeals of Kentucky has already recognized, in a very recent decision, that which Mr. Eaton says he thinks should be done. In the case of *Thomas vs. City of Lexington*, which was a case as to the propriety of the legislature's fixing the salary of a policeman, although there was nothing in the constitution prohibiting it, the court held that municipalities had certain rights independent of the constitution. I desire to state this fact so that Mr. Eaton may know that one of the courts in this country had already adopted the view which he has advocated here to-night.

The Association then adjourned to Thursday morning at 10.30 o'clock.

SECOND DAY.

Thursday, August 28, 1902, 10.30 A. M.

The President called the meeting to order.

The President :

Gentlemen of the American Bar Association, I take pleasure in presenting a gentleman who needs no introduction to the American Bar—the Honorable John G. Carlisle.

John G. Carlisle, of New York, then delivered the Annual Address.

(See the Appendix.)

The Secretary :

The General Council reports favorably on the election of the following new members.

New members were then elected.

(See List of New Members.)

The President :

The report of the Committee on Jurisprudence and Law Reform is now in order. Is the committee ready to report?

P. W. Meldrim, of Georgia, then read the report of that committee.

(See the Report in the Appendix.)

William L. Taylor, of Indiana :

Mr. President, I rise to state that I cannot agree with the report of the committee because it does not recommend anything on the subject of the revision of the civil and also of the criminal code of the United States. It seems to me that we lawyers owe it to ourselves and to the country to recommend something in the way of such revision. It has been twenty-eight years since anything was published in the way of revision of these codes, and this Commission has been working for years, and, I think, it is universally admitted that they have

not done well. Now I think this Association ought to recommend something to the committees of Congress. We need a revision of all the laws—certainly, a revision of the criminal code for the regulation of our federal practice. All that was said last night by the distinguished jurist of England can be expressly directed to the criminal code of the United States. We need this revision now—not years hence, and this great body ought to take positive and decided action upon the subject and call it to the attention of the committees of Congress. I think a committee ought to be appointed by this body for that purpose, clothed with power to present something to Congress when it meets next winter. We need an entire revision of the civil laws so that whether the laws are good or bad, they can at least be clearly understood.

P. W. Meldrim :

I thought I made it plain, Mr. President, that the Commissioners have made two reports to Congress—one a codification of the penal laws, and the other a judiciary law of the United States, and both of those reports are now in the hands of the committees of Congress waiting for a report upon them.

William L. Taylor :

But what I am arguing for is that this Association should appoint a committee who shall discuss the matter and be prepared to give some information—if information is what is wanted—to this committee of Congress, some of the members of which committee may be good lawyers and some of whom may not be ; and, at all events, our committee might give them the benefit of their enlightened views, and we all know that a committee from the American Bar Association is accorded careful attention.

The President :

The question is still before us—what will you do with this report ?

William Wirt Howe, of Louisiana :

I move that the report be received and filed.

Henry H. Ingersoll, of Tennessee :

I second that motion.

Walter S. Logan, of New York :

I would amend that motion, Mr. President, by moving that the report be received and adopted.

The President :

Is the amendment seconded ?

Henry H. Ingersoll :

I will second the amendment.

The amendment was carried, and the report adopted.

The President :

Next in order is the Committee on Judicial Administration and Remedial Procedure.

A. J. McCrary, of New York :

I regret that I am compelled to ask a little time before making a formal report on behalf of this committee. Our committee has been unfortunate in its inability to get together, and it has not yet been determined which of a number of matters will be reported to this body. I therefore ask that we may have until some later time in the session to present a report.

The President :

If there is no objection the presentation of the report of this committee may be deferred until later.

Is there a report from the Committee on Legal Education and Admission to the Bar ?

Henry Wade Rogers, of Illinois :

The Chairman of that committee is out of the hall at the moment, but I will say for him that there is no report from that committee to be submitted.

The President :

Next in order is the report of the Committee on Commercial Law, of which Mr. Logan, of New York, is chairman.

Walter S. Logan, of New York :

It is a wise provision of our constitution that allows a report to be printed and distributed in advance of the meeting of the Association. In pursuance of that provision I refrain from reading the report, as you have all had the report before you. You have read it if you were interested in the subject. If you have not read it, you would not listen to me if I were to read it now. The wisdom of distributing the report beforehand is shown in the fact that it then goes to all the fifteen hundred or more members of the Association, instead of to the hundred and fifty or less who are present at the meeting.

The committee have wrestled during the last year with the bankruptcy law, and it has been a tough wrestling match. This Association has taken strong ground for several years in favor of the general principles of a bankrupt law which shall not only relieve the debtor, but which shall enable the creditor to protect his interest in the estate of an insolvent debtor, and which still further shall administer that estate in an equitable and fair manner. We believe that too much attention has been paid in the bankrupt law to the simple fact of the discharge of the debtor. That is only *one* of the objects of the bankrupt law. The administration of the estate—the fair and equitable distribution of the assets—is even more important than the release of the debtor. The recommendations of this committee in reference to the bankrupt law in years past have been adopted by this Association, and those recommendations are renewed in this report so that we stand by all that we have recommended in the past. That being done, we have gone this year one step further. We believe that the Constitution of the United States is a wise and far-reaching instrument, and that the makers of the Constitution acted wisely, and that in prescribing the powers of Congress in relation to bankruptcy and giving it jurisdiction in all bankruptcy cases, it saw far into the future—a nation such as we have, instead of a nation such as they had. The wisdom of a bankrupt law, of the administration of the estate of an insolvent

person under the laws of the United States rather than under the laws of a particular state, is seen when we consider how far reaching is the commerce and trade of the United States. There are few men who are in business whose trade is confined to a single state. There are fewer bankrupts whose creditors are confined to a single state. It is the purpose of a national bankrupt law to administer the estate of the bankrupt in a jurisdiction which is as extensive as the whole United States. One of our recommendations is that the bankruptcy court shall have jurisdiction over the estate of deceased insolvents as well as over living bankrupts. I am told by Judge Chalmers, who spoke here last night, that that provision has been a part of the English bankruptcy law for twenty-five years and has worked admirably. The logic of it is in the fact that one of the essential purposes of the bankruptcy law is to prevent the possibility of preferences either voluntary or involuntary—to prevent a man who cannot pay all of his debts from selecting friendly creditors to receive all his estate, or to prevent the ever-present creditor from getting all the assets. We believe that the doctrine of the common law that to the vigilant belong the spoils is not the doctrine of equity and justice. We believe that when a man cannot pay his debts in full, whatever he has should be divided among his creditors fairly and equally, and not among the particular friends he has who happen to be creditors, or the people who happen to get in first. That is the essential principle of a bankruptcy law and the law is not logically complete unless there is a provision for bringing estates of deceased bankrupts within the operation of the law. There is no reason why a debtor who dies within four months after he has made a fraudulent preference, or after an attachment has been obtained against him, should, by the act of dying, validate the preference when, if he had lived, the preference would have been set aside by the bankruptcy court. There is no reason why if a preference is not to be allowed in the case of a bankrupt who lives, it should be allowed in the case of a bankrupt who dies.

We also believe that the involuntary features of the bankruptcy law should be extended so that in a case where a man is notoriously insolvent, his creditors may step in and get what they can and fairly distribute it among themselves, rather than to allow him to go on speculating at their expense.

I want to say a word for your Commercial Law Committee. As I stated at the outset, we have wrestled with this subject long and earnestly. The members of the committee have devoted much time to its work. We have tried to do our duty, and have brought the results of our deliberations before you, and I can state in all earnestness that—leaving the Chairman out of account—you have a Commercial Law Committee of which you may be proud. This Association is in session three days in the year, and out of session 362 days. During the session of the Association the work is done by the Association itself, but during the remaining 362 days of the year, whatever work the Association does has to be done by its committees. I believe the committees of this Association are a very important part of it, and that the work of the Association must be carried on in very great measure, and more and more so, as the years go by, through its committees. The Commercial Law Committee is one of the standing committees of the Association; it has appreciated the important questions that come within its domain; it appreciates the fact that this is a great commercial nation, and that the perfection of the commercial law is one of the most important things which this Association can accomplish. We are struggling with the subject, and we purpose to struggle with it another year if you give us a franchise to do so, and, when we have thrashed it out as best we can, we shall bring it to you to do the rest.

In conclusion, allow me to offer the following resolution :

Resolved, That the report of the Committee on Commercial Law be approved and adopted, and that the committee be authorized and directed to advocate and urge proper legislation by Congress on the lines recommended in the report.

William A. Ketcham, of Indiana :

I second the resolution offered by the chairman of the committee.

The resolution was adopted.

(See the Report in the Appendix.)

The President :

The Committee on International Law is next in order. Mr. Everett P. Wheeler, of New York, is the chairman of that committee, but I have not seen him here. If there is no one present representing the committee, it will be passed.

Next in order is the Committee on Grievances. Evidently, there is no report from that committee.

Is there any report from the Committee on Obituaries ?

The report of the Committee on Obituaries was read by the Secretary.

(See the Report in the Appendix.)

The President :

The next committee to report is the Committee on Law Reporting and Digesting, of which Mr. Keasbey, of New Jersey, is Chairman.

The report was presented and read by Edward Q. Keasbey, of New Jersey, chairman of the committee.

M. A. Montgomery, of Mississippi :

I would like to ask the chairman of this committee whether it is the province of his committee to consider the regulations of certain publishing companies. For instance, we will say, there comes to my office a circular stating that if I desire to purchase a certain serial, I am compelled to purchase it from the company, and not from any person. Now, suppose I am a poor lawyer and I have ten volumes of this serial. I pay for them the regulation price. Now then, suppose a struggling young lawyer, at my desk, desires to purchase my books and he can get them from my estate at \$2.00, it appears to me that this Association should take into consideration that matter and advise these book companies that no matter how

I have secured my books, I may still proceed to purchase the books at the price they sell them to other persons. I do not know whether this matter is within the province of this committee or not, but I know it is a subject that confronts a number of young attorneys who desire to secure the rest of those books and cannot do it for less than the regulation price.

Edward Q. Keasbey :

It seems to me that anything that interests the Bar with reference to the digests ought to be within the province of the committee to consider, and I will state that if the committee can do anything for the Bar in this respect, it will cheerfully do so; and, speaking for the present committee, I will state that anyone who has any suggestions to make with reference to the reports and digests, if they will make them in writing to the chairman of the committee before the meeting of the Association, they will receive attention and consideration.

On motion, the report was received and adopted.

(See the Report in the Appendix.)

Simeon E. Baldwin, of Connecticut :

Mr. President, I should like to propose a reference to that committee of a question which has been at times discussed in the Association, and which, I think, might be further discussed by the committee, namely, whether some action may not be taken by this Association towards preventing the excessive multiplication of our law reports by some better system of withholding from publication opinions that possess no legal value. There is a power in most of our appellate courts to withhold from publication cases of that character, which, perhaps, might be more widely exercised. In some states there are statutes that forbid any such discretion on the part of the court. It seems to me that such statute should be amended so as to allow such discretion, and that, where such discretion exists, it should be exercised more frequently than it is in withholding from publication opinions dealing merely with disputed questions of fact or which are only the iteration of plain principles of law that are undisputed. I think the

opinion of this Association would have weight with publishing houses in this regard, and in that view I desire to offer this resolution :

Resolved, That the Committee on Law Reporting be requested to inquire and report whether it might not be advisable for this Association to express an opinion as to the desirability of withholding from publication opinions which have no importance in explaining or developing law ; this to be accomplished by orders of court and by the action of unofficial reporting publishing houses.

James D. Andrews, of Illinois :

I second that resolution. In doing so I desire to supplement it by this remark. Anyone who has had any experience in the handling of a large number of decisions for classification and exposition, whether by digesting or by condensation, soon discovers that a large part of the decisions do not advance any new principle ; that is, they add nothing whatever to the volume of the law, nor do they add to the value of the illustrations of the application. A recent book, which has been printed in England by a gentleman who was for a long time the adviser of Parliament, classifies these into leading and illustrative cases. Now, if the committee could recommend that the digesters be careful to distinguish which cases are of each class, and also recommend that the courts and the reporters and the publishers of reports should not pad the books with these merely illustrative cases, it would tend greatly to the simplification of the law and to a reduction in its bulk.

A. V. W. Van Vechten, of New York :

I should like to inquire from Judge Baldwin what his idea would be as to the censorship ? When we want to see the opinion of a judge, we want to see the whole of it, for it may be in the very last sentence, or somewhere in the middle of it, that we will find the clause that will determine us as to whether we shall appeal or not. In the nearly fifty-five years of my practice, my experience teaches me that it is a little difficult

to determine where any such censorship as Judge Baldwin suggests shall begin.

Simeon E. Baldwin :

My resolution does not assume to inquire into the methods of writing opinions, but as to the propriety of publishing all the opinions that are written. I am quite in sympathy with the statutes of some of the states, that every appellate decision must be supported by a written opinion. In most states it is the custom to do so. The defeated party ought to know why he has been defeated. But it is not of equal interest to the community at large, and I venture to say that if it were possible, seventy-five per cent. of the decisions made by American courts every year had better, for the profession, be buried in oblivion or in the clerk's office. Let them be written, but not reported. I am not hopeful of that ever being accomplished, but I do think that while probably our appellate courts do suppress from five to twenty-five per cent. of their opinions, that proportion might still be increased. I feel confident that if this Association should express to the publishing houses their opinions to this effect, the clerk's offices would not be ransacked for opinions that courts do not think worth while to publish. I say, therefore, let the opinions be written as they are, and let the censorship be that of that court, and let that censorship be respected.

Martin D. Follett, of Ohio :

My experience has been—and it is not very short, either—that if you do not cut out twenty-five or seventy-five per cent. of the different subjects reported upon, or cases, you might cut out at least thirty-three or fifty per cent. of the opinions and yet get all of the case, and, I think, it would be well to ask our judges, in writing their opinions, to write simply what was submitted, and that alone, without writing a treatise. Ohio has had some treatises written four or five hundred pages long. When the judge discusses simply the question decided and the reason for the opinion, let him stop there. I believe that

would help, and we would buy all our books for one-half the present price.

The resolution was then adopted.

The President :

Is there any report from the Committee on Patent, Trade-mark and Copyright Law ?

L. L. Bond, of Illinois :

The sessions of the Section of Patent Law will commence this afternoon, Mr. President, and the probabilities are that we shall have a resolution to present to this body later on. I would, therefore, request that we be given further time.

The President :

If there is no objection, this committee may have further time.

Ferdinand Shack, of New York :

Mr. President, we are honored to-day by the presence with us of a distinguished member of the Canadian Bar, Mr. M. W. Hoyles, K. C., of Toronto, and I move you sir, that under the provisions of the by-laws, he be accorded the privileges of the floor during the meeting.

The motion was seconded and adopted.

W. L. Taylor, of Indiana :

Mr. President, I understand that Mr. Carlisle is not a member of this Association, and therefore, we may accord to him what we cannot, under our by-laws, give to a member. Therefore, I move that the thanks of this Association be extended to Hon. John G. Carlisle for his splendid address to-day.

The motion was seconded and adopted by a rising vote.

William Wirt Howe, of Louisiana :

Mr. President, I desire to offer the following resolution, and to move that it be referred to the Committee on Uniform State Laws :

Resolved, That the Committee on Uniform State Laws be authorized and requested to consider and report at the next

annual meeting on the question of uniform legislation and inter-state comity respecting Taxation, and especially with reference to matters of situs, jurisdiction and double taxation.

Amasa M. Eaton, of Rhode Island :

I second that motion.

The motion was adopted.

William Wirt Howe :

I also offer the following resolution and move that it be referred to the same committee :

Resolved, That the Committee on Uniform State Laws be authorized and requested to consider and report at the next annual meeting whether it is expedient to promote uniform legislation on the subject of forced heirship disinheritance (that is, a limitation of testamentary disposition) and the disallowance of "captation" or "undue influence" as a ground of annulment of wills and testaments.

The motion was seconded by Amasa M. Eaton, of Rhode Island, and was adopted.

A recess was then taken until 8 P. M.

EVENING SESSION.

Thursday, August 28, 1902, 8 o'clock P. M.

The President :

The Association will come to order. We will now listen to a paper by Emlin McClain, of Iowa, on "The Evolution of the Judicial Opinion."

Emlin McClain then read his paper.

(See the Paper in the Appendix.)

The President :

You have just heard a very interesting and instructive paper by Judge McClain. The next order of business is discussion upon the subject of the paper read.

Walter S. Logan, of New York :

I think every member present would like to hear from Mr. Chalmers, of England, upon that subject.

M. D. Chalmers, of England :

Mr. President and Gentlemen: You have asked me to say a few words about the very interesting and very instructive paper which we just had from Professor McClain. I hardly know what line to take. It is a paper, I think, the main use of which, and I think, probably, the main intention of which, was to make us think, and one hardly has time to think it out and to suggest anything for your consideration. Of course, your reporting system here, with forty courts, each of which is supreme in its own sphere, gives rise to difficulties which we do not have to meet in England. We have in our ultimate courts of appeal a coördinating authority. Sooner or later, decisions which, in the language of English lawyers, do not agree with the opinion of Westminster Hall or which Westminster Hall considers unsound, are carried up to the House of Lords, and there disposed of. With us, therefore, the problem is not so pressing as with you. I hope that we shall have some remarks, and further remarks, from those who are more practically acquainted with the difficulties which Judge McClain has so clearly pointed out. I was telling him a story of what, I think, was the shortest judgment, and the most effective judgment, that I ever heard. A prisoner had been found guilty, and the judge was lecturing him on the enormity of his crime. The prisoner objected to the lecture in addition to his sentence, so he called out, "Cut it short, Governor; how much?" His lordship entered into the thought that the question was a fair one, and answered it by merely holding out his hand and putting up his five fingers. Well, as the learned lecturer has pointed out, that answered all practical purposes; everyone was satisfied.

But there is one point which, perhaps, for information, I may ask about. The learned judge said that in nineteen cases out of twenty, no question of law arises; if the judge

and counsel know their duty, the case is so conducted that absolutely no question of the law arises in those cases. Therefore, it is quite unnecessary to repeat the principles of law which apply. That is so; but the doubt I feel is how you are to deal with the question of appeals. If an appeal lies, the court of appeal must be furnished with the reasons of the court below. Possibly some of you will kindly explain how that matter can be dealt with here. In England, in the county courts, with which I am familiar, we have this rule: The county court judge is not bound to give any reason for his judgments, unless, during the course of the case, he is asked to take a note of the facts raising a point of law on which an appeal may be brought. If counsel raise no point of law, and do not ask him to take the note, he only takes the note for his own satisfaction, and he gives no more reasons for his judgment than is necessary, in his opinion, to satisfy the parties. If, however, the case involves a real question of law, the counsel on either side can ask him to take a note of the facts bearing on that point, and then he is bound to state his reasons in writing for the benefit of the appellate courts. I hope, now, that somebody else will throw some light on the points raised by this very interesting paper. As for me, I will remember Lord Bacon's maxim, "A much-speaking judge is no well-tuned cymbal."

The President:

If there is no further discussion the next in the order of business is the report of the Committee on Classification of the Law, of which Mr. James D. Andrews, of Illinois, is chairman.

James D. Andrews, of Illinois:

Mr. President and Gentlemen of the Bar Association: The Committee on Classification of Law is able to report some progress. The committee is able to report itself as unanimous upon one proposition, namely, the importance of legal classification. It has not been found that any of the committee

deem it advisable to report a scheme of the classification of American law for adoption or for the consideration of this meeting for the purpose of adoption or rejection. The reasons for this, perhaps, are manifest. This committee has been together but for one year, and it is not to be expected that, on a subject of such vast scope and difficulty, they could arrive at a conclusion, which would be at all unanimous, within that period of time, but the chairman wishes to say that the lack of unanimity would not alone deter the submission of a report or reports, majority and minority, or five different reports, as the case might be, for your consideration, because it is proved now in every proposition that is before this Bar Association, and which will arise, that there cannot be such a thing as unanimity. No one can devise a report or a scheme of legal classification which will be satisfactory in every particular to any one man, even the person who devised it, but it is far more obvious that no one, nor no set of men, although they combine all the learning and skill of all the Trebonians who have lived, can devise a scheme of legal classification which will satisfy everyone. Nor is that at all essential to progress. The point is not whether this or that scheme of classification, or uniform legislation or codification, shall satisfy everyone, but does it offer a distinct and definite improvement over that which has heretofore existed? If it does, then it performs one of the offices or objects which this Association was formed to promote, namely, to advance the science of Jurisprudence, the other being to promote uniformity of legislation. Now, the chairman desires to say enough in this presence to excite your curiosity, but not enough to satisfy it, and it has been our labor to formulate a report, not for the purpose of reading it here, because the report has not been constructed with a view to the consumption of time in reading it, or what might appropriately be taken of your time and ours, but such a report as will suggest the salient features and controlling points of what must ultimately constitute the scheme of legal classification. Not that it can embrace all of them; not that it exhausts the subject; but

that it submits enough by the way of a question to every lawyer and jurist and every member of this Association who is interested in the advance of the science of Jurisprudence, that he may aid this Association and the committee in its work by communicating with the committee his views of approval or disapproval or his suggestions of schemes, to the committee, or any member of it, in order that, another year, we may submit in ample time for your consideration individually, a scheme of classification which may be submitted to your judgment collectively either for adoption or for rejection. I will take the time, not to read everything, but to call your attention to an outline of the subjects which have come before us.

I will present an outline of the report, reading portions of it.

The report was then presented and was read in part.

(See the Report in the Appendix.)

Edgar M. Cahn, of Louisiana :

I move that the committee be granted further time.

The motion was seconded and adopted.

The President :

We will now receive the report of the Committee on Industrial Property and International Negotiation.

Francis Forbes, of New York, read the report of the Committee on Industrial Property and International Negotiation.

On motion the report was received and filed.

(See the Report in the Appendix.)

New members were then elected.

(See List of New Members.)

The President :

The next in order is the report of the Committee on Indian Legislation.

The Secretary :

I believe there is no member of that committee here, and I have a letter from Mr. John B. Sanborn, of St. Paul, Minnesota, Chairman of the committee, written on July 28, 1902.

The Secretary then read the letter.

(See the Appendix.)

The President :

The next in order is the report of the Committee on Uniform State Laws, of which Mr. Brewster is the Chairman.

Lyman D. Brewster, of Connecticut, then read the report of the Committee on Uniform State Laws.

(See the Report in the Appendix.)

Amasa M. Eaton, of Rhode Island :

I move that the report of the committee be received and placed on file, and that the committee be continued.

The motion was seconded.

Waldo G. Morse, of New York :

I wish to inquire of the Chairman of the committee whether the amendment to the law as passed in the state of New York during the last session of the legislature and the preceding session, being the two sessions following the enactment of the law, have put the law as here in force out of accord with the law in other states ; whether the amendment passed by the legislature in New York during the past session and during the preceding session, both of which followed the adoption of the law, as I believe, have put the law in the state of New York out of accord with the law in other states, or whether the law in other states has been similarly amended.

Lyman D. Brewster :

I was not aware of any change whatever. Mr. Crawford has recently published a new edition of his book. It may be well to say that when the law was first passed, it was the last act signed by the Governor, and was full of clerical errors, and Mr. Crawford had to publish an edition so as to correct those errors. He has recently published another one, and when I saw him the other day, he made no mention of any change in the law. Some gentleman from New York ought to be more familiar with it. I am not aware of any change whatever.

The President :

It is moved and seconded that the report be received and the committee continued.

The motion was adopted.

The President :

The next in order is the report of the Committee on the Federal Code of Criminal Procedure.

Charles F. Libby, of Maine :

The report is very brief. At the last session this committee was continued with the idea that it might co-operate in some way with the Commission to revise the Criminal Laws of the United States. Immediately upon the appointment of that Commission I, as chairman of this committee, communicated with the Commission, and turned over to them all the materials that had been collected, expressing the willingness of the committee to co-operate in any way with the Commission. No notice was taken of the letter transmitting the material, nor had the committee, up to the time of the last meeting, in any way heard from the Commission. It was not until I reached the hall here to-day that I learned that the Commission had reported in the form of a bill. Since the last meeting, I have received one letter from the chairman of that Commission complaining of a report I made to this Association last year to the effect that no communication had been received from that Commission acknowledging receipt of my letter above mentioned, and saying that he was not aware that there had been any correspondence, and he thought the Association might, perhaps, have given valuable aid. I answered the letter, giving him copies of the correspondence ; to that I have received no reply. I therefore think that there is no useful purpose to be subserved by continuing this committee with the idea that it may co-operate in some way with the Federal Commission, but in order that the relations of this Association to that Commission may be preserved, I have annexed to the report all the correspondence so that it may be upon the files of the Secretary, and the report that I submit on behalf of the committee is as follows :

Mr. Libby then read his report.

(See the Appendix.)

Irving F. Baxter, of Nebraska :

I move that the report be accepted, the resolution adopted and the committee discharged.

The motion was seconded and adopted.

(Note by the Secretary. This action was reconsidered the following day, and the committee was continued.)

The President :

The next in order is the report of the Committee on Federal Courts.

Edmund Wetmore, of New York :

The United States Commission, which has already been referred to, after a long lapse of time, has reported and there is now before the Committee of Congress its revision in regard to the courts and procedure. That revision embraces in part the provisions which were contained in the bill which received the approval of this Association ; in part, it differs from it. The duty now devolves upon the committee of appearing before the Committee of Congress, or of appearing before the Attorney-General, who, I understand, is the adviser of the committee, and procuring, if possible, the inclusion in the revision of the provisions that have received the approval of this Association ; or if that cannot be done, the passage, if it appears that the revision is not to be passed, of the separate bill which this Association has already adopted. To enable that work to be carried on, the Committee on Federal Courts asks to be continued with the powers with which they are already clothed of advocating the measures which have met the approval of the Association, and I move, therefore, that the committee be continued with its present powers.

The motion was seconded and adopted.

The President :

The next in order is the report of the Committee on Title to Real Estate.

Ferdinand Shack, of New York, read the report of the Committee on Title to Real Estate.

(See the Report in the Appendix.)

Walter S. Logan, of New York :

I move that the report be approved and adopted, and the committee continued with its present powers.

Seconded and carried.

The President :

The next in order is the report of the Committee on Louisiana Purchase Exposition.

James Hagerman, of Missouri, read the report of the Committee on Louisiana Purchase Exposition.

(See the Report in the Appendix.)

James Hagerman :

I move in accordance with the suggestion contained at the close of the report.

The motion was seconded and adopted.

The President :

Next in order is the report of the Committee on Penal Laws and Prison Discipline.

Martin D. Follett, of Ohio :

I would say in regard to that committee that the majority did not arrive during the session, although the chairman, Judge Fort, of New Jersey, thought that he would be here yesterday. Those of the committee who are here wish to offer the following resolution :

WHEREAS, This Association, in 1900, resolved that it is desirable that the American Bar Association be represented in the International Prison Congress to be hereafter held. Therefore,

Resolved, That such representation may be by a committee of three members of the Association duly appointed by the President before the assembling of such Prison Congress in any year hereafter.

I would say in regard to this, that a few members of this Association were in Europe two years ago and attended the Prison Congress at that time, making a report here two years ago, and thinking that it would be of very great value to the

Prison Congress as well as to many members of this body if this body could be represented there and meet the lawyers and judges and workers in prison matters in Europe, and as they themselves have requested.

This resolution goes to the effect of asking this—helping you to carry out your action of two years ago. It is a Prison Congress that meets once in five years, meeting next in Hungary, then invited to meet in 1910 in the United States, and we expect that they will be here at that time. I, therefore, move the adoption of this resolution, which I think will accomplish all that we care for now.

The resolution was seconded and adopted.

Walter S. Logan, of New York :

I wish to offer the following resolution. I do it at the request of several prominent gentlemen in this state, whose letters I have in my hand and whose names are well known :

WHEREAS, The study of comparative legislation is indispensable to the science of jurisprudence and the discovery of true principles of legislation ;

WHEREAS, At present the comparative study of the legislation of the various countries of the world is for most purposes impracticable ;

WHEREAS, The work of the State Library Department of the University of the State of New York in comparative state legislation points a way to an organization of the enactments of all countries and suggests an efficient agency for performing this task ;

Resolved, That the American Bar Association earnestly urges upon the trustees of the Carnegie Institution the importance of providing, in co-operation with the New York State Library, a comprehensive organization of the material required for the comparative study of world legislation.

Resolved, That a committee of three be appointed to present this matter to the trustees of the Carnegie Institution.

I am sure, sir, that no one will appreciate more than you who have just waded through the statute legislation of the

United States for the past year, the importance of a work such as is proposed. The letters which I have, asking for the adoption of this resolution are from leading jurists and educators in this state.

The motion was seconded and adopted.

Henry H. Ingersoll, of Tennessee :

I think probably it is necessary for me to give notice in order to secure the consideration to-morrow of a resolution to the effect that, whereas it is inconvenient, uncomfortable and unpleasant for this Association to hold its meetings in this enormous hall, in the future this place will not be used for that purpose. I am not sure whether it is required to change the constitution, but whatever is necessary, I wish to do, that we may not be afflicted with the echoes and noises which have pervaded and disturbed us here during this present meeting. I am sure we can find a better place to meet. If you will come down to Tennessee I can furnish half a dozen, and we can furnish them in Virginia. This is certainly not a pleasant place for this distinguished body to be comfortable and enjoy its meeting.

Martin D. Follett :

A matter has been referred to the committee that I just spoke of on penal matters and a request that that committee act in reference to the resolution, and I will read the resolution, and as the committee are not here to consider it, I will ask simply that the resolution be referred, if thought best by the Association, to that committee to report upon next year, not this year. I simply read it for information and move that it be referred to the committee to report upon one year hence.

Resolved, That we are in favor of establishing in the Department of Justice, at Washington, a laboratory for the study of the criminal, pauper and defective classes, it being understood that such investigation is a development of work already begun under the Federal Government. That such study shall include a collection of jurisprudential, sociological and patho-

logical data in institutions for the delinquent, dependent and defective, and in hospitals, schools and other institutions; that especially the *causes* of social evils shall be sought out with a view to ameliorating or preventing them.

The resolution was seconded.

Waldo G. Morse, of New York :

It is late in the evening; many members have left the hall; and we are now under reports of committees. I rise, owing to the lateness of the hour and the few members present, to take the point of order, that we, being under reports of committees, cannot take up miscellaneous business which is set for to-morrow morning.

The President :

The reports of the committees have all been disposed of.

Waldo G. Morse, of New York :

Miscellaneous business is expressly set for to-morrow morning, and I take the point that new business cannot be taken up this evening, if objection is made.

The President :

The point is well taken, I think.

The Association then adjourned to Friday morning, August 29, 1902, at 10.30 o'clock.

THIRD DAY.

Friday, August 29, 1902, 10.30 A. M.

The President called the Association to order.

The President :

At our meeting yesterday morning, the report of the Committee on Judicial Administration and Remedial Procedure was passed. The chairman of the committee is now ready to report, I believe.

The report was read by A. J. McCrary, of New York, chairman of the committee.

James Hagerman, of Missouri :

I move that the report be received and placed on file.

Spencer C. Doty, of New York :

I second that motion.

The motion was adopted.

(See the Report in the Appendix.)

Hiram F. Stevens, of Minnesota.

I am instructed by the General Council, and I have great pleasure in doing so, to present their report nominating the following list of officers of the Association for the ensuing year :

For President : Francis Rawle, of Pennsylvania.

For Secretary : John Hinkley, of Maryland.

For Treasurer : Frederick E. Wadhams, of New York.

For members of the Executive Committee, to be elected :

Charles F. Libby, of Maine.

Rodney A. Mercur, of Pennsylvania.

James Hagerman, of Missouri.

P. W. Meldrim, of Georgia.

Platt Rogers, of Colorado.

I have also the list of vice-presidents, one from each state, and members of the local councils, which I will hand to the Secretary and ask him to read.

The Secretary read the list of nominations for vice-presidents and local councils.

The President :

These nominations will lie upon the table until the order of election is reached.

William A. Ketcham :

I think, owing to the lateness of the hour last night, that possibly we made a mistake in the disposition of the report of the Committee on Federal Code of Criminal Procedure. The report was not fully read, but its contents were

made known to us. From that report and from what I have learned elsewhere, it seems to me that that committee ought not to have been discharged. The Federal Code is in the hands of Congress, and, I think, it will need the assistance of that committee. Therefore I move that we reconsider the action taken last night in discharging the committee. I do this for the purpose of making a modification to the motion.

The motion to reconsider was seconded and carried.

William A. Ketcham :

I now move to amend the motion so that the report may be received and placed on file, and the committee continued.

The motion was seconded and adopted.

Waldo G. Morse, of New York :

I propose an amendment to the by-laws providing for the printing of reports of committees. By referring to page 96 of our Transactions last year you will observe the following footnote :

“ The following resolution was adopted on August 30, 1889 :

“ *Resolved*, That any standing or special committee hereafter reporting necessary legislation shall prepare a bill embodying their views for the approval of the Association.’ ”

That seems a little inappropriately put there. It is not a by-law, and still it is printed with the by-laws. Now, to remedy that situation, I propose an amendment of the proper by-law which shall embody the resolution now printed as a rider. It is as follows :

Be It Resolved, That Paragraph Third, Section XII of the By-laws of this Association be amended by the insertion after the words “ shall be printed,” in place of the word “ and,” the following :

“ together with a draft of bill embodying the views of the committee whenever legislation shall be proposed. Such report ”

Also, by adding to said section the following :

“No legislation shall be recommended or approved except upon the report of a committee.”

The whole section as amended will then read as follows :

All committees may have their reports printed by the Secretary before the annual meeting of the Association ; and any such report, containing any recommendation for action on the part of the Association, shall be printed, *together with a draft of bill embodying the views of the committee whenever legislation shall be proposed.* Such report shall be distributed by mail by the Secretary to all the members of the Association at least fifteen days before the annual meeting at which such report is proposed to be submitted. *No legislation shall be recommended or approved except upon the report of a committee.*

I move the adoption of this amendment.

The amendment was seconded and adopted.

The President :

The Chair understands there is a pending motion made by Judge Follett, of Ohio.

Martin D. Follett, of Ohio :

The motion made last night was that the resolution itself should be referred to the committee on penal matters. I wish now to change that motion, and move that the resolution be adopted. It is a resolution that has been printed for some time. I have here a letter from Judge Fort, who is the chairman of this committee, stating that he approves the proposed provision, and he is desirous that any steps by which we can further investigate criminal matters, shall be taken. I will also say that the National Conference of Charities and Correction took similar action two years ago, and the result of a large part of it, compiled by Arthur McDonald, of Washington, D. C., shows many endorsements of it by members of the Senate and the House and penological workers all over the United States and Europe.

It seems to me that there is no necessity to wait, if we approve of this further study of criminal matters. I hold in my

hands an address delivered before the Ohio State Bar Association twenty years ago, discussing the question of the proper punishment of criminals and their restoration to good citizenship. All this action, which has been going on for some time, and is connected already with the Census Bureau, shows us that we need wait no longer, as there seems to be an almost universal endorsement of the idea.

Therefore, instead of having the resolution referred to the committee, I move that we now approve it, or recommend that we favor the establishment of such a bureau.

The motion was seconded.

Hiram F. Stevens, of Minnesota :

I would like to have the Secretary read the resolution for the information of the house.

The Secretary read the resolution as follows :

Resolved, That we are in favor of establishing in the Department of Justice, at Washington, D. C., a laboratory for the study of the criminal, pauper and defective classes, it being understood that such investigation is a development of the work already begun under the Federal Government. That such study shall include the collection of jurisprudential, sociological and pathological data in institutions for the delinquent, dependent and defective, and in hospitals, schools and other institutions ; that especially the cause of social evils shall be sought out with a view to ameliorating or preventing them.

The President :

The Chair is inclined to rule that out of order. The resolution proceeds in this manner, " That we are in favor of establishing," and so forth. Now, that could only be done by legislation, and we have just amended one of our by-laws by providing that no legislation shall be recommended or approved except upon the report of a committee.

Merrill Moores, of Indiana :

I move, Mr. President, that the resolution be referred to

the Committee on Jurisprudence and Law Reform, which, I believe, is the proper committee.

George C. Bedell, of Florida :

I second that motion.

William A. Ketcham, of Indiana :

I move to amend by sending it to the Committee on Penal Laws and Prison Discipline. I think it ought, in the first instance at any rate, to go to that committee; and it might move along appropriately from that to the other committee, but I think it ought first to be considered by the Committee on Penal Laws and reported to this Association.

Hiram F. Stevens, of Minnesota :

It has always been our aim to select a President who understood the constitution, and now we have such an one occupying the Chair. I think we should not proceed to invade his province or take away his prerogative as President in this matter, and he has said that he thinks there is a constitutional objection to the consideration of the resolution at this time.

Rodney A. Mercur, of Pennsylvania :

I move, as a substitute, that the resolution be laid on the table.

Lucius W. Hoyt, of Colorado :

I second that motion.

James Hagerman, of Missouri :

I raise the point of order that this specific resolution was, by vote of the Association last night, referred to the committee.

The President :

The Secretary informs the Chair that the minutes show that the Association adjourned with this resolution still pending.

James Hagerman :

Then, sir, I think it ought to go to the committee and let them report upon it at the next session of the Association.

The President :

There is a motion before the house to lay the resolution on the table, and that motion is not debatable.

A vote was then taken. The result of the vote being in doubt, a division was called for, and the motion to lay on the table was lost by a vote of 64 nays to 25 ayes.

Frank Harvey Field, of New York :

Now, Mr. President, I move that the resolution be referred to the Committee on Penal Laws and Prison Discipline.

James Hagerman, of Missouri :

I will second the motion just made.

Frank Harvey Field :

I understand the resolution comes before us through a gentleman who is the acting chairman of the Committee on Penal Laws and Prison Discipline, and it was his request that the matter be referred to his committee for report at the next meeting. I think, in courtesy to him, we should take that action.

The motion was adopted.

Lester L. Bond, of Illinois :

The Chair will remember that yesterday the report of the Committee on Patent Law was passed. The matter of a trade-mark law is considerably confused at the present time, and Congress is asking that legislation be recommended which will put our laws in this respect in harmony with treaties. The Section of Patent Law desires your committee to offer the following resolution, in the hope of enabling a bill to be presented to Congress at its coming session.

Resolved, That it is the sense of the Patent Section of the American Bar Association that a comprehensive national trade-mark law should be enacted by Congress, which will provide for the registration in the United States Patent Office of trade-marks used in interstate as well as foreign commerce, and also contain provisions to fulfill certain trade obligations which have been entered into by the United States Government with foreign nations on the subject of trade-marks.

Therefore, it is Resolved, That the Standing Committee on Patent, Trade-mark and Copyright Law be and it is hereby requested to frame a bill containing provisions as above indicated, and report such bill to the next meeting of this Association, having previously complied with the requirements of the by-laws of the Association as to the printing and distribution of the committee's report before the meeting.

The motion was seconded and adopted.

Robert S. Taylor, of Indiana :

Mr. President, I desire to offer the following resolution, and move that it be referred to the same committee :

Resolved, That the Standing Committee on Patent, Trade-mark and Copyright Law be requested to submit a report at the next meeting of the Association upon the subject of the creation of a court of patent appeals, and, if they shall report favorably to the creation of such a court, to submit a bill to be laid before Congress.

The motion referring the resolution to the Standing Committee on Patent, Trade-mark and Copyright Law was seconded and adopted.

Mr. Franklin Smith, of Saratoga, was, on motion of Walter S. Logan, of New York, given the privilege of the floor and extended an invitation to the members of the Association and guests to visit the reproduction of the House of Pansa at Pompeii.

Seymour D. Thompson, of New York :

I wish to offer a resolution which I feel sure will meet with the concurrence of every gentleman present, and I hope it will not be sidetracked by any provision of the by-laws. If it is seconded and not sidetracked, I would crave the privilege of making a few brief remarks in support of it.

Resolved, That it is the sense of the American Bar Association that Congress ought, without further delay, to pass a measure to provide for the erection of a building for the exclusive

occupancy and use of the Supreme Court of the United States, its officers, its bar and its library.

Lester L. Bond, of Illinois :

I second the adoption of that resolution.

The President :

I shall be compelled to rule it out of order under the by-laws.

George B. Rose, of Arkansas :

I move, sir, that the by-laws be suspended for the purpose of allowing Mr. Thompson to introduce his resolution and speak to it.

The motion was seconded and adopted.

The President :

Judge Thompson, the motion is adopted, and you may have the floor.

Seymour D. Thompson, of New York :

Mr. President and Gentlemen : A member of the bar of our country, going to the Supreme Court of the United States for the first time, is struck with the gross inadequacy of the accommodations provided. The court-room itself, though full of historic associations which make it valuable and precious to the judges, is inadequate for the work of the court on special and crowded occasions. Three rooms of moderate size are devoted to the use of the clerk and his deputies. One of these rooms serves as a lobby for the assembled bar, and their conversation interrupts the clerk and his assistants and amounts to a public inconvenience. The judges, I understand, have only one room for consultation, which is called their robing room. If a member of the bar wishes to make a special application to a judge for a writ of error, let us say, he must hunt up the judge at his residence on some date fixed by special appointment. There is no convenient place in the Capitol building where he can make a brief argument before the judge. No judge has chambers of his own. The library of the court—if it is not a misnomer to call it such, for it is a

part of the library of Congress—is in the basement of the Capitol building, two stories below, and access to it is very inconvenient. There is no special hall of records, though I have never heard it suggested that the public records are for that reason insecure.

Several bills have been introduced in Congress to remedy this evil, of four or five of which I have copies at home. They all contemplate one thing—the condemnation or the purchase of the vacant space of about three acres east of the Capitol and to the north of the new library building. Why none of these bills has been passed into a law I do not know. Perhaps those of us who reflect upon the methods of Congress, each member trying to do something primarily for his own constituency, may divine the reason. More than eight hundred millions of dollars were appropriated by the last session of Congress for this and that purpose, yet all of these bills were neglected and allowed to fall through. The last bill, so far as I know, was introduced by the late Senator McMillan, and was simplicity itself. It provided for the building of the court alone—not for the Department of Justice nor for any of the other courts located in the District of Columbia, but simply for the Supreme Court of the United States. It appropriated only one million dollars, presumably to start the movement of the measure. That bill was also neglected and allowed to fall through.

Now let us picture, for a brief moment, what we ought to have. I do not merely say what the judges ought to have, though we ought to use them according to their deserts, which are very high.

We ought to remember that, when assembled, they constitute the greatest judicial tribunal in the world—the only tribunal to whom the sense of expediency and fitness of a great people has accorded the power to set aside sovereign legislation. Think of the Guardians of the Constitution huddled together like sardines in a box! With an appropriate building, they would have a hall in which to conduct the sessions of the

court, equal to the best in the country—equal to that of the Appellate Division in New York. They would have a library belonging to the court, with ample room, on the same floor. They would have an ample consultation room near the library. Each judge would have a private office or chamber where he might hear applications special to him. The bar would have a lobby equal to the lobby or reception-room of the best clubhouse in the country. All these things, and others which might be suggested, which could be added by way of adornment, we can imagine, but need not discuss in detail. It is true that a court is not created by a great building; a palace does not make a great court; buildings do not make a great university. The court is made. Its beneficent work is behind it. In this measure the American people not only treat the judges according to their deserts, but they treat themselves according to their own sense of honor and decency. It is due to the American people that their great tribunal, the Guardian of their Constitution, should be properly housed and decently treated.

Waldo G. Morse, of New York :

I desire to second the resolution.

Edward B. Whitney, of New York :

There is no doubt in the mind of anyone that the Supreme Court of the United States ought to have ample room, but, as I understand this motion, it provides that nothing shall be in this new building except the Supreme Court, the Marshall's Rooms, and the Library. Now, why should this Association undertake to recommend to Congress that a building should be established for the sole use of the Supreme Court of the United States when there are other courts, like, perhaps, the Court of Patent Appeals, which it is proposed to establish, the Court of Appeals of the District of Columbia, which is very badly housed, the Court of Claims, which is in temporary quarters, and other tribunals that it may seem to Congress to be wise and economical to put into a building which may,

perhaps, be a larger building than would be required for the Supreme Court alone. I would therefore amend the resolution by striking out the word "exclusive."

The amendment was seconded.

Hiram F. Stevens, of Minnesota :

The members of the profession do not cease to be lawyers when they become members of the Judiciary Committees of the two Houses of Congress, and they have doubtless given due consideration to this matter. Why is it that we say that a certain proposition projected here upon the last day of the session is "the sense of this body?" Do we mean, "common sense?" Do we mean deliberate judgment? Are we going to pass upon such important matters without due consideration? No authority could be more eminent than the learned scholar who has presented this question "by request," as he says, but without any statement of facts, and nothing could be more worthy as a subject than the Supreme Court of the United States, although we speak of that court, I suppose, always in the same reverence, but not in the same degree of tenderness, depending somewhat upon the recent treatment that we have received there. But the point is that this Association has not the influence in Congress that it ought to have, and there are chairmen of committees here who will tell you so, because it has too often declared that something was its sense upon a subject, in respect to which it did not know the facts. That is not a lawyer's way of doing. It is not the way a deliberate body should proceed. With all respect to the mover of this resolution, whom we all respect most highly, and whose authority upon any proposition that he does discuss upon the merits is always based upon the most thorough examination of the facts, so that not only lawyers, but judges, accord "absolute verity" to it—notwithstanding that, and notwithstanding the Supreme Court of the United States so highly and so worthily commended the subject of it, I do not think this Association ought to show either disrespect to those of its members who have acted upon this subject as members

of congressional committees nor—pardon me—ignorance of a subject in respect to which it declares what is its sense. A gentleman has asked here a very plain question, “Why should not courts of the District of Columbia, and perhaps other courts, be housed in the same building?” I do not know, and I do not like, as a lawyer acting temporarily as a juror, to say whether something should not be done in respect of which I know nothing. I should like further information first.

William L. Taylor, of Indiana:

Mr. Whitney, who has just made this amendment, was for years a member of President Cleveland’s legal family and speaks of matters of which he has full knowledge. The Chairman of the Judiciary Committee is a distinguished lawyer of my own state, Mr. Fairbanks, and his committee has this entire matter under consideration now. They are trying to arrange, as Mr. Whitney has stated, not only for the Supreme Court, but for the Court of Claims and other courts of the District of Columbia, and also for the Department of Justice. It is just as necessary that the Attorney-General be close to the Supreme Court as that the Supreme Court should have a separate building. I, therefore, hope that Mr. Whitney’s amendment will prevail and the word “exclusive” be stricken out.

Hiram F. Stevens:

I would ask the gentleman whether, in his opinion, it would not be more effective to amend the resolution so as to read: That the respective committees of Congress, having charge of the matter, be requested, if found practicable, to do as proposed.

Seymour D. Thompson:

I have no objection to that amendment, and I will accept it. My only object was to bring the subject before the Association.

M. A. Montgomery, of Mississippi:

Then, do I understand the mover of the resolution to accept Mr. Stevens’ amendment?

Seymour D. Thompson :

Yes, sir.

Frank Harvey Field, of New York :

Gentlemen, I do hope the resolution will not be amended as proposed.

Hiram F. Stevens :

It has been accepted by the mover of the resolution.

Frank Harvey Field :

Even that will not, without the consent of the house, embody it in the resolution. Can it be possible that this body cannot express its sense upon a matter of this kind, but must pass a resolution in the form proposed? It seems to me, sir, that if we have any thought on any subject, we have a right to express it in open meeting, and if the members of the American Bar Association believe that the Supreme Court should be appropriately housed so that it shall fittingly represent the greatness and dignity of the court, they have a right to say so. In New York we have an Appellate Court of five judges, and we have erected for them uptown a magnificent temple, which is one of the ornaments of the city, one of the most fitting places in which to house an appellate tribunal in all the world. Now, sir, it may be advisable that similar quarters should be provided for the Court of Claims, for the Department of Justice and for other courts in the city of Washington, but it seems to me that the Supreme Court of the United States should be housed alone by itself. I hope the resolution will be adopted in its original form.

Robert D. Benedict, of New York :

I desire to express the hope that the amendment offered by Mr. Whitney will prevail. From my experience I think it is most desirable that the courts of the United States in the District of Columbia should be at one locality which should be well known, and that the Department of Justice should also be in the same locality, and that lawyers who go to Washington to attend to business should not have to hunt up a di-

rectory in order to find out where they must go to transact their legal business. A small building, comparatively speaking, would furnish adequate accommodation for the Supreme Court alone. If you put all the judicial tribunals there under one roof, together with the Department of Justice, you can then have a building which shall be adequate for the purpose, as well as an ornament to the city of Washington, and which would be convenient to the members of the bar.

Henry E. Davis, of the District of Columbia :

I rise to inquire, Mr. President, what amendment we are talking about ?

The President :

As the Chair understands it, we are talking to the amendment proposed by Mr. Stevens, of Minnesota.

Henry E. Davis :

A motion was made to strike out the word " exclusive " and that was before the house. Mr. Stevens' amendment was attempted to be accepted by the mover of the original resolution, which, of course, he had no right to do, to cut out Mr. Whitney's amendment. I, therefore, raise the point of order that what we are discussing now is, or should be, Mr. Whitney's amendment.

A. J. McCrary, of New York :

I would like to have the resolution read, so that I may offer an amendment to it.

The President :

There are two amendments pending now, as the Chair understands.

A. J. McCrary :

But, sir, I believe mine will be accepted as a substitute, if I can get a chance to offer it. My amendment is this, " That after the word ' building ' the reading shall be, a temple of justice for the proper accommodation of the courts distinctly national in character, together with their officers and a library."

William A. Meloy, of the District of Columbia :

The amendment proposed at this moment by the gentleman is entirely inconsistent with the original resolution, which provided that the building should be exclusively for the use of the Supreme Court of the United States. The committees of Congress are not in harmony on that subject. The amendment and the original resolution are not in harmony, and this amendment cannot, therefore, be received in lieu of, or as a substitute for, Mr. Whitney's amendment, which, in my judgment, ought to be first disposed of. I raise that point of order.

The President :

The Chair holds the point of order well taken, and thinks we shall get out of the difficulty quickest by taking a vote upon Mr. Stevens' amendment.

Seymour D. Thompson, of New York :

If I am at liberty to do so, I beg leave to withdraw my acceptance of Mr. Stevens' amendment.

Hiram F. Stevens :

Mr. President, I press the amendment.

William A. Ketcham, of Indiana :

Then the question stands now on the amendment proposed by Mr. Whitney, does it ?

The President :

No, sir. It stands on the amendment proposed by Mr. Stevens, and I will ask Mr. Stevens to restate it.

Hiram F. Stevens :

Resolved, That it is the sense of the American Bar Association that the respective committees of Congress, having in charge bill—and here might be put in the numbers of the Senate and House bill—should take such early and urgent steps as may be possible to secure the passage of some measure affording necessary relief to the Supreme Court of the United States in respect to its court room and library.

William A. Ketcham :

I raise the point of order, Mr. President, that the amendment is not sufficiently specific and definite to challenge the attention of this body.

E. K. Sumerwell, of New York :

I understand the meeting has before it an amendment to the original resolution. Now, I make the point of order that Mr. Stevens' proposal is not an amendment to the amendment.

Edgar M. Cahn, of Louisiana :

In order to avoid confusion as to what is the proper question before the house, and also as to what are the facts, I suggest, as a substitute, that the President appoint a committee to find out what are the facts, and, after conference with the appropriate committee having the matter in charge, to recommend in behalf of this Association the early and speedy construction of appropriate quarters for the Supreme Court of the United States, without putting the word "exclusive" in the motion.

The President :

The Chair must request, in order that we shall know precisely what is before the house, that all resolutions or amendments be put in writing, as provided by the rule.

William A. Ketcham, of Indiana :

If I understand the situation as it is now, there was presented a resolution by Mr. Thompson, and then there was an amendment suggested by Mr. Whitney, and the question stands on that proposed amendment. There have been suggestions made, of course, but there has been nothing that the Chair has recognized as a proposed amendment except the amendment of Mr. Whitney, and that is now the question that is before the body. Am I not correct?

The President :

You are correct.

William A. Ketcham :

Now I ask to be heard on that.

Hiram F. Stevens :

And I ask to relieve the gentleman by withdrawing the suggestion, as he terms it.

The President :

Gentlemen, are you ready for the question on the amendment offered by Mr. Whitney ?

Henry E. Davis :

I want to be heard before a vote is taken. I am opposed to the amendment, and I am in favor of adopting the original resolution with the word "exclusive" in it. I think I know as much about the sentiment in the District of Columbia on this subject as anyone here, and I want to say that the Supreme Court of the United States will defeat any bill that contemplates housing it with any other court or with the Department of Justice. That is as certain as anything can be. They do not want any other court under the same roof with them. Moreover, the Court of Claims does not want to go in the same building with the United States Supreme Court because it will have to move to a point inconvenient to its business. Furthermore, if it is attempted to put any other court in the same building with the Supreme Court of the United States, Congress will overshoot the mark and put too many courts there and thus derogate from the dignity of the structure and from the dignity of the collection of judicial talent there. There can be no doubt that there is a settled sentiment of all the judicial bodies in the country, and it is becoming the settled sentiment of the House and Senate Committees that the Supreme Court should be housed by itself. The only thing that is in the way is the question of money. The Appropriations Committee of the House balked at erecting a building for the Supreme Court of the United States in the face of the necessity of having presently to do the same thing for the Court of Claims, which court is housed in a building belonging to the Government, but in certain line of destruction in view of coming improvements in the city which will take the ground where the Court of Claims now is

located. If this Association declares it to be its sense that the Supreme Court of the United States ought to have a building for itself, it will make a move in the right direction, and that is with the Appropriations Committees. Nobody in Washington is ignorant of the situation; it is well understood to be just as I have stated. The courts do not want to come together in one building, and, if you invite Congress to bring any two of them together, you will have Congress trying to pack them all together and you will have a motley collection of offices having no relation one to another. The original resolution should be adopted, and the word "exclusive" is the hammer with which to strike the Appropriations Committees.

Edward B. Whitney :

I want to add one thing, Mr. President, to what has been said. I want to call attention to the fact that my friend Davis has not answered the point of the amendment, which is that this Association is undertaking to give its advice, on short consideration, as to a matter in the District of Columbia, and if we undertake to volunteer advice on such a matter, we are likely to impair the influence which we should have in presenting matters that we do understand fully.

William A. Ketcham :

Our position would be identically the same on that whether we put in the word "exclusive" or took it out.

Henry E. Davis :

Mr. Whitney is in error if he supposes that the District of Columbia will ever contribute a dollar to this building. It will not. It will be constructed exclusively out of the funds of the United States. I repeat what I said before, that the Appropriations Committee will put several courts together, and if we say here that it is our sense that the Supreme Court ought to have a building by itself, we will do, in my opinion, a very good thing and an effective thing.

James Hagerman, of Missouri :

If the building should be set apart as a national building for

the exclusive use of the Supreme Court of the United States, I am in favor of it. As to the Department of Justice being put in the same building, that is absurd. The Department of Justice is every day a litigant before the Supreme Court, and it wants to be apart from that court just as much as an individual litigant should be.

Frank Harvey Field, of New York :

Mr. President, I would suggest that we hear from a distinguished member of this Association on this subject, a gentleman whose name was once sent in by the President as a Justice of the Supreme Court of the United States—Mr. Hornblower.

The President :

Mr. Hornblower, the Association would be glad to hear anything you may have to say on this subject.

William B. Hornblower, of New York :

I think we, as lawyers practicing before the Supreme Court of the United States, have a right to express our sense of what should be done in this matter. If Congress is going to resent it, let them resent it and take the responsibility.

As to the matter of appropriation, if the Appropriations Committees are hesitating over the question of how much they shall appropriate for the Supreme Court of the United States, when they are appropriating money lavishly in every other direction, then, I say, let them take the responsibility for that. It seems to me that on principle there can be no two sides to this proposition. The Supreme Court of the United States should be by itself. I agree entirely with Mr. Davis that nothing could be more undignified than to have all the courts of the District of Columbia housed in the same building with that august tribunal. The Supreme Court of the District of Columbia, the Court of Appeals of the District of Columbia, the Court of Claims and the other subordinate courts of the United States in the District should be by themselves and not housed with the United States Supreme Court. We in New York city have fought this thing out and have

fought it through successfully. We had an appellate division—or, rather, a general term it was then—of the Supreme Court, which had jurisdiction to review the decisions of all the other local judges, and for years they were housed in the same building, and we deliberately have taken those judges apart from the *nisi prius* judges and have built a building for them some two miles away, and they sit there in quiet dignity to review the decisions of the courts below.

I submit, Mr. President, that it is only right and fair that the bar of the United States should express its sense, and, for my part, I have no sort of doubt about the side on which my sense lies.

The President :

Gentlemen, the question is on the amendment offered by Mr. Whitney, to strike out the word “exclusive.”

The amendment was lost.

The President :

The question now recurs upon the resolution as originally offered by Mr. Thompson.

The resolution was adopted.

William B. Hornblower :

Mr. President, I desire to offer the following resolution :

Resolved, That the Committee on Federal Courts be instructed to prepare for submission to this Association at its next annual meeting a bill providing for an increase in the number of judges composing each United States Circuit Court of Appeals from three to five, four of whom shall be necessary to constitute a quorum.

If this resolution is seconded, I desire to say a few words upon it.

Oscar R. Hundley, of Alabama :

I second the resolution.

William B. Hornblower :

We all know the origin of the Circuit Courts of Appeals system. When most of us began to practice law all cases went

directly from the *nisi prius* court to the United States Supreme Court, or else from the District Court through the Circuit Court to the Supreme Court of the United States, provided a certain amount was involved. That resulted, as we all know, in an accumulation of business in the Supreme Court which put them some three or four years behind in their work. The present scheme was devised, I think with the approval of the Association, to relieve the Supreme Court from a great deal of its work and to enable it to keep up with its business, and in the main it has worked very satisfactorily. So far as the personnel of the judges is concerned, I think we are all satisfied with the Circuit Courts of Appeals throughout the country. We have had able, conscientious, industrious and honest judges in the Circuit Courts of Appeals, and they have done their work well. But the system is a vicious one. We have here a court of last resort, for that is what it practically is in nine-tenths of the cases. In every common law case between citizens of different states, either originally brought in or removed into the Federal court, in all equity cases, in all patent cases, in all admiralty cases, as the law stands to-day, the decision of the Circuit Court of Appeals is final unless certified up by the court itself, or by *certiorari* from the Supreme Court. We have, therefore, this court sitting as a court of last resort. Three judges sitting as a court of last resort are not sufficient in number to command the proper respect and confidence of the community, even when they are unanimous. It is not a sufficiently august tribunal for a court of last resort. There are very few states which confide cases of last resort to three judges. In almost all the states we have at least five judges, and in some seven, and in some more. But certainly five judges ought to be in a court of last resort. We have sometimes this unseemly spectacle presented: Two judges of this court are a quorum. If two of those judges decide to reverse the lower court, even though the third judge dissents, the judgment below is reversed; and we have two judges practically opposed to two

52 INCREASE OF JUDGES IN CIRCUIT COURT OF APPEALS.

others, and yet determining what the law shall be in that particular case. I have had that happen in my own experience where two judges reversed with a dissent, and that made two judges practically overruling two, and yet laying down the final law for that case without right of appeal, except as a matter of discretion.

Then, again, this sometimes happens. Two judges sit in a case and are evenly divided. That results in affirming by a divided court, and we have this spectacle then exhibited of a single judge affirming a judgment against the opinion of another coördinate judge. That makes two against one, it is true, in favor of the judgment, but still it is an unseemly spectacle. Now, there has been no scandal in regard to the Circuit Courts of Appeals so far as I know; they have all acted independently and fairly, but there is a tendency, when you have only three judges sitting together, for one mind to dominate the three. We found that very greatly in our state practice in New York, and here again I might draw upon my experience. As some of you know, we had a general term of our Supreme Court. There were five general terms, composed of three judges each, selected from the trial justices of the Supreme Court. Those judges constituted an intermediate court between the *nisi prius* court and the Court of Appeals, and every case that went to the Court of Appeals had to go through this intermediate court of three judges. We had that same difficulty there that I am stating with regard to the United States Circuit Courts of Appeals. We had important decisions made by two judges. We had important cases overruled by a vote of two to one. We had cases where two judges sat without the third and differed in opinion. The difficulty in our case was not so great, because almost every case was appealable as of right to the Court of Appeals, which sat at Albany, and which was composed of seven judges. But when we came to amend our constitution in 1894, following the recommendations made by a commission of which I had the honor to be a member, appointed by the governor in 1890,

we established an Appellate Division of the Supreme Court, composed of five judges, and we gave that Appellate Division final jurisdiction and made them a court of last resort in a large majority of cases. That has worked very satisfactorily to the bar and to the bench, and, I think, those of us who practice in New York will agree that we would not take a step backward if we could possibly do it.

This resolution, of course, calls only for a report by the committee which shall be presented at the next annual meeting and does not commit the Association now. My own notion is that we can take the twenty-six circuit judges that we have now and have them divided up into a sufficient number of tribunals to cover the field of the entire nation. The details of the scheme can be worked out later. All I ask now is that the Association so far express its approval of the general principle that there should be five judges instead of three in the Circuit Courts of Appeal as to instruct the Committee on Federal Courts to prepare a bill.

The resolution was adopted.

Frank Harvey Field, of New York:

I move that copies of the resolution of Judge Thompson be sent by the Secretary to the President of the United States and to appropriate committees of the two houses of Congress.

M. S. Isaacs, of New York:

I second the motion.

The motion was adopted.

Merrill Moores, of Indiana:

I move that all resolutions hereafter offered be referred by the President to the appropriate committee, without debate. We cannot get through unless that is done.

The motion was seconded and adopted.

The Secretary:

I would report that the Auditing Committee have reported, stating that they have examined the Treasurer's report and audited the same and find it to be correct.

The Association then proceeded to the election of officers upon motion duly adopted.

The Secretary cast the ballot of the Association for the gentlemen nominated for officers of the Association for the ensuing year, and they were then declared unanimously elected.

(See List of Officers.)

The meeting then adjourned *sine die*.

JOHN HINKLEY,
Secretary.

SECRETARY'S REPORT.

SARATOGA SPRINGS, NEW YORK, August 27, 1902.

The report of the proceedings of our last meeting at Denver, Colorado, in August, 1901, has been printed and distributed to all the members, and also to a large number of libraries and Bar Associations on our free mailing list.

There were 1720 members at the close of the last meeting. Forty-three members have been elected by the Executive Committee between meetings, under Article IV of the Constitution as amended.

All of the states and territories are represented in our membership, except the state of Nevada.

Invitations were sent to all State Bar Associations to send three delegates to this meeting, and to all City and County Bar Associations, in states having no State Bar Association, to send two delegates. There are thirty-nine State Bar Associations, two Territorial Bar Associations, the Bar Association of the District of Columbia and about two hundred and ninety-three local Bar Associations.

The report of the Committee on Commercial Law for this year has been printed and distributed to members by mail fifteen days before the meeting.

Notices were sent to all members of standing and special committees, requesting their attention to matters referred to such committees.

The Secretary has undertaken during the past year to ascertain the street addresses of all members and now has them conveniently arranged in a card index. Members changing their address are requested to notify the Secretary in order that the index may be kept accurate.

The register of those in attendance is kept on the table at the hall of meeting during the sessions, and is at the recep

tion room in the Grand Union Hotel in the intervals. The list is valuable for reference, and every member or delegate is requested to sign it as early as convenient. A list of those present will be printed for distribution at the meeting, and will also be included in the report of proceedings.

There are copies of the constitution, lists of officers and members of committees, and forms of nomination on the table for distribution.

Respectfully submitted,

JOHN HINKLEY,

Secretary.

TREASURER'S REPORT.

1901-1902.

Dr.

To balance from last report,		\$4,804 14
" cash received—dues of members,	\$8,255 00	
" " " —interest on special deposit,	15 00	
" " " —sale of Reports,	90 50	8,360 50
		<hr/>
		\$13,164 64

Cr.

1901.

Aug. 20.	By cash paid—Incidental expenses of	
	24th Meeting,	\$21 58
21.	" " " —Dues of D. E. Parks	
	(not elected) returned,	5 00
24.	" " " —Denver Club, cigars for	
	24th Dinner,	112 80
24.	" " " —Smith-Brooks Printing	
	Co., printing for 24th	
	Meeting,	49 75
24	" " " —Incidental expenses of	
	24th Meeting,	13 20
Sept. 6.	" " " —Expenses of Treasurer's	
	Clerk to Denver, Col.,	
	to attend 24th Meeting,	151 63
6.	" " " —C. A. Morrison, Steno-	
	grapher, 24th Meeting,	223 75
7.	" " " —Brown Palace Hotel,	
	Denver, Col., 24th	
	Dinner,	1,376 00
16.	" " " —Printed stamped en-	
	velopes,	65 40
		<hr/>
	Amount carried forward,	\$2,019 11 \$13,164 64

AMERICAN BAR ASSOCIATION.

1901.			By amount brought forward, . .	\$2,019 11	\$13,164 64
Sept. 27.			By cash paid—G. M. Sharp, acct. ex- penses of Com. on Legal Ed. for year end. Aug., 1901,	24 85	
Oct. 7.	"	"	" —Jno. Hinkley, balance of his disbursements for Clerk hire, etc., for year ending Aug., 1901,	551 80	
10.	"	"	" —Three months' rent, storage room,	30 00	
28.	"	"	" —E. Wetmore, disburse- ments for postage, sta- tionery, etc., as Presi- dent,	50 00	
Nov. 27.	"	"	" —H. L. Carson's expenses to Montreal to attend banquet of Montreal Bar, as the representative of American Bar Asso., .	43 25	
Dec. 2.	"	"	" —Three months' rent, storage room,	30 00	
1902.					
Jan. 2.	"	"	" —G. M. Sharp, acct. ex- penses of Com. on Legal Ed. for current year, .	100 00	
Feb. 5.	"	"	" —Printed stamped en- velopes,	63 60	
12.	"	"	" —Shipping 1901 Report, .	16 00	
24.	"	"	" —Insurance on Reports, .	8 50	
24.	"	"	" —Three months' rent, storage room,	30 00	
26.	"	"	" —Murphy's Sons Co., cash and receipt books, . .	12 75	
Mch. 17.	"	"	" —Preparing index to State Bar Asso. Reports, . .	100 00	
Amount carried forward, . . .				\$3,079 86	\$13,164 64

REPORT OF THE TREASURER.

59

1902.			By amount brought forward, . .	\$3,079 86	\$13,164 64
Apr. 12.	By cash paid—	John Hinkley, Secre-	tary, on acct. of dis-		
			bursements for clerk		
			hire, etc., for current		
			year,	250 00	
25.	"	"	" —Adams Express Co., ex-		
			pressage on Reports to		
			Denver, Col.,	8 70	
May 12.	"	"	" —G. M. Sharp, acct. ex-		
			penses of Com. on Legal		
			Education,	173 73	
23.	"	"	" —Sundry expenses, tele-		
			grams, expressage, etc.,		
			to date,	63 81	
June 16.	"	"	" —Three months' rent,		
			storage room,	30 00	
17.	"	"	" --Printed stamped en-		
			velopes,	42 40	
18.	"	"	" —U. S. Express Co., de-		
			livering 24th Report, .	438 29	
July 17.	"	"	" —Stenographer, Treasur-		
			er's office,	47 00	
26.	"	"	" —Dando Print. & Pub.		
			Co., printing and bind-		
			ing 24th Report, . . .	2,075 64	
26.	"	"	" —Same, printing extra		
			copies of papers, ad-		
			dresses, etc.,	439 12	
26.	"	"	" —Same, printing circu-		
			lars, stamped envelopes		
			and general printing to		
			date,	300 95	
Aug. 12.	"	"	" —Murphy's Sons Co., en-		
			velopes for Committee		
			Reports,	4 50	
Amount carried forward, . . .				\$6,954 00	\$13,164 64

REPORT

OF THE

EXECUTIVE COMMITTEE.

SARATOGA SPRINGS, NEW YORK, August 27, 1902.

The Executive Committee respectfully report that under the last clause of Article IV of the Constitution, providing for the election of members by the Executive Committee between meetings when nominated by a majority of the Vice-President and Local Council, the following forty-three members were elected :

CHARLES D. HAYT,	Denver, Col.
CHARLES W. WATERMAN,	Denver, Col.
WARREN OLNEY,	San Francisco, Cal.
J. CLAUDE BEDFORD,	Philadelphia, Pa.
WILLIAM GORDON ROBERTSON,	Roanoke, Va.
DAVID B. HENDERSON,	Dubuque, Ia.
WILLIAM B. ALLISON,	Dubuque, Ia.
FRED S. BALL,	Montgomery, Ala.
JOSEPH THOMPSON,	Atlantic City, N. J.
FREDERICK V. HOLMAN,	Portland, Ore.
HORATIO BISBEE,	Jacksonville, Fla.
GEORGE C. BEDELL,	Jacksonville, Fla.
EZRA P. AXTELL,	Jacksonville, Fla.
JOHN E. HARTRIDGE,	Jacksonville, Fla.
D. F. SMITH,	Kalispell, Mont.
CHARLES E. CHRISMAN,	Mapleton, Ia.
A. L. ABBOTT,	St. Louis, Mo.
ALBERT A. DOUB,	Cumberland, Md.
D. LINDLEY SLOAN,	Cumberland, Md.
WILLIAM C. DEVECMON,	Cumberland, Md.
FREDERIC R. COUDERT, JR.,	New York, N. Y.
PAUL FULLER,	New York, N. Y.
WALTON PENNEWILL,	Philadelphia, Pa.
WAYNE MACVEAGH,	Philadelphia, Pa.
JOHN R. DICKSON,	Pueblo, Col.
WALTER W. DAVIS,	Leadville, Col.
IVAN W. GOODNER,	Pierre, S. D.
FERDINAND WILLIAMS,	Cumberland, Md.
HENRY D. MERCHANT,	New York, N. Y.

WILLIAM G. BROWN,	New York, N. Y.
FREDERICK I. ALLEN,	Auburn, N. Y.
E. ALLEN FROST,	Chicago, Ill.
JESSE A. BALDWIN,	Chicago, Ill.
THOMAS H. REYNOLDS,	Kansas City, Mo.
JAMES L. HOPKINS,	St. Louis, Mo.
JOSEPH G. RALLS,	Atoka, I. T.
JOSEPH B. CHURCH,	Washington, D. C.
ROBERT L. WILLIAMS,	Durant, I. T.
M. HERNDON MOORE,	Columbia, S. C.
JAMES LINDSAY GORDON,	New York, N. Y.
THEODORE M. MALTBIE,	Granby, Conn.
THEODORE FITCH,	Yonkers, N. Y.
NATHAN W. LITTLEFIELD,	Pawtucket, R. I.

Your committee further report that, in accordance with the 12th By-Law, appropriations were made for the use of committees for the year 1901-1902, on their application, not exceeding the following amounts:

\$275 to Committee on Uniform State Laws.

\$500 to Committee on Legal Education and Admission to the Bar.

\$150 to Committee on Commercial Law.

\$200 to Committee on Classification of the Law.

All committees for the ensuing year whose work may entail expense, are requested to conform to the 12th By-Law, which requires "previous application in advance of the expenditure." Such application should be made to the Executive Committee through the Secretary.

Respectfully submitted,

U. M. ROSE,

EDMUND WETMORE,

JOHN HINKLEY,

FRANCIS RAWLE,

W. A. KETCHAM,

CHARLES F. LIBBY,

RODNEY A. MERCUR,

JAMES HAGERMAN,

Executive Committee.

MEMBERS AND DELEGATES REGISTERED

AT THE

TWENTY-FIFTH ANNUAL MEETING.

1902.

U. M. ROSE, Arkansas.
President.

JOHN HINKLEY, Maryland.
Secretary.

FRANCIS RAWLE, Pennsylvania.
Treasurer.

EDMUND WETMORE, New York.

WILLIAM A. KETCHAM, Indiana.

HENRY ST. GEORGE TUCKER, Virginia.

CHARLES F. LIBBY, Maine.

RODNEY A. MERCUR, Pennsylvania.

JAMES HAGERMAN, Missouri.
Executive Committee.

ALABAMA.

BROMBERG, FREDERICK G., Mobile.

HUNDLEY, OSCAR R., Huntsville.

ARKANSAS.

COCKRILL, ASHLEY, Little Rock.

DOOLEY, P. C., Little Rock.

FLETCHER, JOHN, Little Rock.

MOORE, J. M., Little Rock.

MCCULLOCH, E. A., Marianna.

ROSE, G. B., Little Rock.

ROSE, U. M., Little Rock.

CALIFORNIA.

KOWALSKY, HENRY I., San Francisco.

MONROE, CHARLES, Los Angeles.

COLORADO.

HOYT, LUCIUS W., Denver.
 O'DONNELL, T. J., Denver.
 ROGERS, PLATT, Denver.

CONNECTICUT.

BALDWIN, SIMEON E., New Haven.
 BEERS, GEORGE E., New Haven.
 BREWSTER, L. D., Danbury.
 ROGERS, HENRY WADE, New Haven.
 STANTON, LEWIS E., Hartford.
 WEBB, JAMES H., New Haven.
 WILCOX, W. F., Chester.

DISTRICT OF COLUMBIA.

BROWN, CHAPIN, Washington.
 BROWNE, ALDIS B., Washington.
 BROWNE, ARTHUR S., Washington.
 CHURCH, MELVILLE, Washington.
 DAVIS, HENRY E., Washington.
 EDSON, JOSEPH R., Washington.
 FISHER, ROBERT J., Washington.
 GREELEY, A. P., Washington.
 MELOY, WILLIAM A., Washington.
 MCGILL, J. NOTA, Washington.
 NEEDHAM, CHARLES W., Washington.
 WILLIAMSON, W. PRESTON, Washington.

FLORIDA.

BEDSELL, GEORGE C., Jacksonville.
 LIDDON, BENJ. S., Marianna.
 WILLIAMS, R. W., Tallahassee.

GEORGIA.

ABBOTT, BENJAMIN F., Atlanta.
 BARTLETT, C. L., Macon.
 BROWN, EDWARD T., Atlanta.
 CANN, GEORGE T., Savannah.
 GORDON, WILLIAM W., JR., Savannah.
 HAMMOND, W. R., Atlanta.
 HARRIS, M. W., Macon.
 MELDRIM, PETER W., Savannah.
 MILLER, FRANK H., Augusta.
 MCINTOSH, J. R., Atlanta.

ILLINOIS.

ANDREWS, JAMES D.,	Chicago.
BARTON, GEORGE P.,	Chicago.
BOND, L. L.,	Chicago.
DENT, THOMAS,	Chicago.
DREW, WILLIAM L.,	Urbana.
FOLLANSBEE, G. A.,	Chicago.
GREGORY, S. S.,	Chicago.
HALL, JAMES PARKER,	Chicago.
HIGBEE, H.,	Pittsfield.
HILL, LYSANDER,	Chicago.
OGDEN, HOWARD N.,	Chicago.
PARKINSON, ROBERT H.,	Chicago.
RICHBERG, JOHN C.,	Chicago.
SCOTT, JAMES B.,	Champaign.
WASHBURN, W. D.,	Chicago.
WIGMORE, JOHN H.,	Chicago.

INDIANA.

BREEN, WILLIAM P.,	Fort Wayne.
FRASER, DANIEL,	Fowler.
KETCHAM, WILLIAM A.,	Indianapolis.
MARTINDALE, CHARLES,	Indianapolis.
MOORES, MERRILL,	Indianapolis.
MORRIS, JOHN, JR.,	Fort Wayne.
PALMER, TRUMAN F.,	Monticello.
ROGERS, W. P.,	Bloomington.
ROSE, JAMES E.,	Auburn.
TAYLOR, R. S.,	Fort Wayne.
TAYLOR, WILLIAM L.,	Indianapolis.

IOWA.

COLE, C. C.,	Des Moines.
DEEBY, JOHN,	Dubuque.
GREGORY, CHARLES NOBLE,	Iowa City.
MCCLAIN, EMLIN,	Iowa City.
QUARTON, WILLIAM B.,	Algona.
REED, H. T.,	Cresco.
ROBERTS, W. J.,	Keokuk.
YONKER, B. A.,	Des Moines.

KENTUCKY.

MACKOY, W. H.,	Covington.
SHERLEY, SWAGER,	Louisville.
TRABUE, EDMUND F.,	Louisville.

LOUISIANA.

CAHN, EDGAR M., New Orleans.
 HOWE, WILLIAM WIET, New Orleans.

MAINE.

HIGGINS, FRANK M., Limerick.
 SKELTON, WILLIAM B., Lewiston.
 LIBBY, CHARLES F., Portland.

MARYLAND.

BERNARD, RICHARD, Baltimore.
 HENDERSON, ROBERT R., Cumberland.
 HINKLEY, JOHN, Baltimore.
 RICHMOND, BENJAMIN A., Cumberland.
 SCHMUCKER, SAMUEL D., Baltimore.
 SHARP, GEORGE M., Baltimore.
 STEUART, ARTHUR, Baltimore.
 WILLIAMS, S. A., Bel Air.

MASSACHUSETTS.

AMES, JAMES BARR, Cambridge.
 BARNES, CHARLES B., JR., Boston.
 BEALE, JOSEPH H., JR., Cambridge.
 CLAPP, ROBERT P., Lexington.
 COPELAND, ALFRED M., Springfield.
 DEWEY, HENRY S., Boston.
 DICKINSON, M. F., Boston.
 FALL, GEORGE H., Malden.
 HEMENWAY, ALFRED, Boston.
 KELLEN, WILLIAM V., Boston.
 MORSE, GODFREY, Boston.
 SPELLMAN, CHARLES C., Springfield.
 WILLISTON, SAMUEL, Cambridge.

MICHIGAN.

BARNETT, JAMES T., Grand Rapids.
 DENISON, A. C., Grand Rapids.
 HUTCHINS, H. B., Ann Arbor.
 JANUARY, WILLIAM L., Detroit.
 ROOD, JOHN R., Ann Arbor.
 SLOMAN, ADOLPH, Detroit.
 WHITTEMORE, JAMES, Detroit.

MINNESOTA.

BROWN, ROME G.,	Minneapolis.
ELLIOTT, CHARLES B.,	Minneapolis.
MASON, ALFRED F.,	St. Paul.
STEVENS, HIRAM F.,	St. Paul.

MISSISSIPPI.

HOWRY, CHARLES B.,	Oxford.
MONTGOMERY, M. A.,	Oxford.

MISSOURI.

ASHLEY, HENRY D.,	Kansas City.
BARCLAY, SHEPARD,	St. Louis.
EARLY, MARION C.,	St. Louis.
FINKELNBERG, G. A.,	St. Louis.
HAGERMAN, JAMES,	St. Louis.
JUDSON, FREDERICK N.,	St. Louis.
KLEIN, JACOB,	St. Louis.
REYNOLDS, THOMAS H.,	Kansas City.
SHERWOOD, ADIEL,	St. Louis.
SPENCER, SELDEN P.,	St. Louis.

MONTANA.

HARWOOD, E. N.,	Butte.
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NEBRASKA.

BAXTER, IRVING F.,	Omaha.
WOOLWORTH, J. M.,	Omaha.

NEW HAMPSHIRE.

CHASE, IRA A.,	Bristol.
EASTMAN, SAMUEL C.,	Concord.
FELLOWS, J. W.,	Manchester.

NEW JERSEY.

BERGEN, J. J.,	Somerville.
BORCHERLING, CHARLES,	Newark.
DUNN, MICHAEL,	Paterson.
EMERY, JOHN R.,	Newark.
HARTSHORNE, CHARLES H.,	Jersey City.
KEASBEY, EDWARD Q.,	Newark.
LYON, ADRIAN,	Perth Amboy.
PARKER, CORTLANDT,	Newark.

NEW YORK.

ASHLEY, CLARENCE D.,	New York.
BARTLETT, JOHN P.,	New York.
BENEDICT, ROBERT D.,	New York.
BINNEY, HAROLD,	New York.
DANAHER, FRANKLIN M.,	Albany.
DAYTON, CHARLES W.,	New York.
DILLON, JOHN F.,	New York.
DOTY, SPENCER CARY,	New York.
ESTABROOK, HENRY D.,	New York.
FIELD, FRANK HARVEY,	Brooklyn.
FORBES, FRANCIS,	New York.
HORNBLOWER, WILLIAM B.,	New York.
HUFFCUT, E. W.,	Ithaca.
INGALSBEER, GRENVILLE M.,	Sandy Hill.
IRVINE, FRANK,	Ithaca.
ISAACS, MYER S.,	New York.
JOHNSTON, T. J.,	New York.
KELLOGG, E. BARSTOW,	New York.
LEVY, JOSEPH L.,	New York.
LOGAN, WALTER S.,	New York.
MILNOR, M. CLEILAND,	New York.
MORSE, WALDO G.,	Yonkers.
MCCRARY, A. J.,	Binghamton.
MCLEAN, DONALD,	New York.
MCNULTY, WILLIAM D.,	New York.
RUSSELL, ISAAC FRANKLIN,	New York.
SHACK, FERDINAND,	New York.
SUMERWELL, E. K.,	New York.
THOMPSON, SEYMOUR D.,	New York.
VAN VECHTEN, A. V. W.,	New York.
WADHAMS, FREDERICK E.,	Albany.
WETMORE, EDMUND,	New York.
WHITNEY, EDWARD B.,	New York.
WILKINSON, THOMAS F.,	Albany.

NORTH CAROLINA.

ANDREWS, A. B., JR.,	Raleigh.
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NORTH DAKOTA.

AUSTIN, JAMES M.,	Ellendale.
BRUCE, ANDREW A.,	Grand Forks.
THOMAS, W. H.,	Leeds.

OHIO.

FOLLETT, MARTIN DEWEY,	Marietta.
HEPBURN, CHARLES M.,	Cincinnati.
JAMES, FRANCIS BACON,	Cincinnati.
PRICE, JAMES L.,	Lima.
TROUP, JAMES O.,	Bowling Green.

PENNSYLVANIA.

ALEXANDER, LUCIEN H.,	Philadelphia.
BEEBER, DIMNER,	Philadelphia.
BUDD, HENRY,	Philadelphia.
DANA, S. W.,	New Castle.
FUTRELL, WM. H.,	Philadelphia.
GOBIN, J. P. S.,	Lebanon.
HIESTER, ISAAC,	Reading.
LANDIS, CHARLES S.,	Lancaster.
LIVINGOOD, FRANK S.,	Reading.
MERCUR, RODNEY A.,	Towanda.
MUNSON, C. LA RUE,	Williamsport.
NILES, HENRY C.,	York.
RAWLE, FRANCIS,	Philadelphia.
SMEAD, A. D. B.,	Carlisle.
SMITH, ALFRED PERCIVAL,	Philadelphia.
STAAKE, WILLIAM H.,	Philadelphia.
STEELE, H. J.,	Easton.
STRAWBRIDGE, WILLIAM C.,	Philadelphia.
WAY, WILLIAM A.,	Pittsburgh.
WOLVERTON, S. P.,	Sunbury.

RHODE ISLAND.

EATON, AMASA M.,	Providence.
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SOUTH CAROLINA.

BUIST, GEORGE L.,	Charleston.
MOORE, M. HERNDON,	Columbia.

TENNESSEE.

CAMP, E. C.,	Knoxville.
INGERSOLL, HENRY H.,	Knoxville.

TEXAS.

BURGES, WILLIAM H.,	El Paso.
DILLARD, F. C.,	Sherman.
EDWARDS, PEYTON T.,	El Paso.
GAINES, R. R.,	Austin.
PHILLIPS, NELSON,	Hillsboro.

VIRGINIA.

COCKE, LUCIAN H.,	Roanoke.
GILLIAM, MARSHALL M.,	Richmond.
GLASGOW, WILLIAM A., JR.,	Roanoke.
LEWIS, L. L.,	Richmond.
MINOR, RALEIGH C.,	Charlottesville.
PATTESON, S. S. P.,	Richmond.
SMITH, WILLIS B.,	Richmond.
TUCKER, HENRY ST. GEORGE,	Lexington.

WEST VIRGINIA.

SMITH, HARVEY F.,	Clarksburg.
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WISCONSIN.

BASHFORD, R. M.,	Madison.
FROST, EDWARD W.,	Milwaukee.

Total Registered, 231.

DELEGATES, 1902.

ALABAMA STATE BAR ASSOCIATION.

FREDERICK G. BROMBERG, Mobile.
A. A. WILEY, Montgomery.
OSCAR R. HUNDLEY, Huntsville.

THE BAR ASSOCIATION OF ARIZONA.

WILLIAM HERRING, Tucson.
A. C. BAKER, Phoenix.
JOHN C. HERNDON, Prescott.

BAR ASSOCIATION OF ARKANSAS.

E. A. McCULLOCH, Marianna.

CALIFORNIA STATE BAR ASSOCIATION.

HENRY I. KOWALSKY, San Francisco.
H. G. W. DINKELSPIEL, San Francisco.
JAMES PARKER HALL, Chicago, Ill.

COLORADO BAR ASSOCIATION.

PLATT ROGERS, Denver.
CALDWELL YEAMAN, Denver.
LUCIUS W. HOYT, Denver.

BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA.

CHAPIN BROWN, Washington.
HENRY E. DAVIS, Washington.
BENJAMIN S. MINOR, Washington.

GEORGIA BAR ASSOCIATION.

E. T. BROWN, Atlanta.
MARION W. HARRIS, Macon.
GEORGE W. OWENS, Savannah.

ILLINOIS STATE BAR ASSOCIATION.

THOMAS DENT, Chicago.
S. S. GREGORY, Chicago.
HARRY HIGBEE, Pittsfield.

LOUISIANA BAR ASSOCIATION.

CHARLES J. BOATNER, New Orleans.
 J. Y. SANDERS, New Orleans.
 J. D. ROUSE, New Orleans.

MARYLAND STATE BAR ASSOCIATION.

SAMUEL D. SCHMUCKER, Baltimore.
 FERDINAND WILLIAMS, Cumberland.
 HARRISON W. VICKERS, Chestertown.

HAMPDEN BAR ASSOCIATION (MASS.).

WILLIAM W. MCCLENCH, Springfield.
 CHARLES C. SPELLMAN, Springfield.

MICHIGAN STATE BAR ASSOCIATION.

WILLIAM L. JANUARY, Detroit.
 A. C. DENISON, Grand Rapids.
 J. F. BARNETT, Grand Rapids.

MINNESOTA STATE BAR ASSOCIATION.

ROME G. BROWN, Minneapolis.

MISSOURI BAR ASSOCIATION.

W. B. TEASDALE, Kansas City.
 JAMES B. GANTT, Jefferson City.
 SELDEN P. SPENCER, St. Louis.

MONTANA BAR ASSOCIATION.

WILLIAM B. RODGERS, Anaconda.
 E. N. HARWOOD, Butte.
 A. C. BOTKIN, Helena.

BAR ASSOCIATION OF THE STATE OF NEW HAMPSHIRE.

JOSEPH W. FELLOWS, Manchester.
 IRA C. CHASE, Bristol.

NEW JERSEY STATE BAR ASSOCIATION.

JOHN R. HARDIN, Newark.
 JAMES J. BERGEN, Somerville.
 FRANK BERGEN, Elizabeth.

NEW YORK STATE BAR ASSOCIATION.

THOMAS F. WILKINSON, Albany.
 PLINY T. SEXTON, Palmyra.
 CHARLES W. DAYTON, New York.

NORTH CAROLINA BAR ASSOCIATION.

PLATT D. WALKER, Charlotte.
 W. D. PRUDEN, Edenton.
 E. J. JUSTICE, Marion.

STATE BAR ASSOCIATION OF NORTH DAKOTA.

GUY C. H. CORLISS, Grand Forks.
 JAMES M. AUSTIN, Ellendale.
 WILLIAM H. THOMAS, Leeds.

OHIO STATE BAR ASSOCIATION.

JAMES O. TROUP, Bowling Green.
 JAMES L. PRICE, Lima.
 J. A. KOHLER, Akron.

PENNSYLVANIA BAR ASSOCIATION.

J. P. S. GOBIN, Lebanon.
 LUCIEN H. ALEXANDER, Philadelphia.
 WILLIAM H. FUTRELL, Philadelphia.

SOUTH CAROLINA BAR ASSOCIATION.

P. H. NELSON, Columbia.
 J. L. GLENN, Chester.
 M. H. MOORE, Columbia.

TEXAS BAR ASSOCIATION.

MACO STEWART, Galveston.
 J. B. STUBBS, Galveston.
 NELSON PHILLIPS, Hillsboro.

VERMONT BAR ASSOCIATION.

JOHN W. GORDON, Barre.
 CHARLES P. HOGAN, St. Albans.
 JOHN H. SENTER, Montpelier.

VIRGINIA STATE BAR ASSOCIATION.

S. S. P. PATTESON, Richmond.
 H. ST. GEORGE TUCKER, Lexington.
 W. R. VANCE, Lexington.

AMERICAN BAR ASSOCIATION.

WASHINGTON STATE BAR ASSOCIATION.

C. H. HANFORD, Seattle.
GEORGE TURNER, Spokane.
T. L. STILES, Tacoma.

WEST VIRGINIA BAR ASSOCIATION.

HARVEY F. SMITH, Clarksburg.
WOOD DAILEY, Elkins.

STATE BAR ASSOCIATION OF WISCONSIN.

CHARLES NOBLE GREGORY, Madison.
R. M. BASHFORD, Madison.
EDWARD W. FROST, Milwaukee.

LIST OF MEMBERS ELECTED.

ALABAMA.

HUNDLEY, OSCAR R., Huntsville.

ARKANSAS.

DOOLEY, P. C., Little Rock.

MOORE, JOHN M., Little Rock.

COLORADO.

COETIGAN, EDWARD P., Denver.

OAKES, EDWARD L., Telluride.

CONNECTICUT.

HUBBARD, LEVERETT M., Wallingford.

STODDARD, WILLIAM B., New Haven.

TUTTLE, J. BIRNEY, New Haven.

DISTRICT OF COLUMBIA.

DODGE, WILLIAM W., Washington.

DOWELL, JULIAN C., Washington.

EDSON, JOSEPH R., Washington.

FRAZIER, ROBERT T., Washington.

PRINDLE, EDWIN J., Washington.

STURTEVANT, CHARLES L., Washington.

GEORGIA.

BROWN, EDWARD T., Atlanta.

CANN, GEORGE T., Savannah.

GORDON, W. W., JR., Savannah.

HAMMOND, WILLIAM R., Atlanta.

HARRIS, MARION W., Macon.

ILLINOIS.

BROWN, CHARLES A., Chicago.

RECTOR, EDWARD, Chicago.

SYNNESTVEDT, PAUL, Chicago.

INDIANA.

KELLEY, WILLIAM H., Richmond.

ROSE, JAMES H., Auburn.

IOWA.

SAWYER, HAZEN I., Keokuk.

LOUISIANA.

CAHN, EDGAR M., New Orleans.

MARYLAND.

COLTON, WILLIAM, Baltimore.

MASSACHUSETTS.

FRIEDMAN, LEE M., Boston.

KNOWLTON, HOSEA M., Boston.

LINCOLN, SOLOMON, Boston.

MICHIGAN.

SLOMAN, ADOLPH, Detroit.

MINNESOTA.

BOUTTELLE, M. H., Minneapolis.

ELLIOTT, CHARLES B., Minneapolis.

HALL, ALBERT H., Minneapolis.

WEBBER, MARSHALL B., Winona.

MISSOURI.

EARLY, MARION C., St. Louis.

NEW JERSEY.

MCCARTER, THOMAS N., Newark.

NEW YORK.

COXE, H. C., (Paris, France.)

DAVISON, CHARLES M., Saratoga Springs.

FIELD, FRANK HARVEY, Brooklyn.

GARDNER, JOHN M., New York.

GREELEY, WILLIAM B., New York.

HALL, CHAS. J. G., New York.

LEVY, JOSEPH L., New York.

MEYERS, SIDNEY S., New York.

MCCALL, EDWARD E., New York.

NOBLE, DANIEL, Long Island City.

REDFIELD, HENRY S., New York.

NEW YORK—Continued.

SEXTON, PLINY T.,	Palmyra.
SUMERWELL, E. K.,	New York.
WHITNEY, EDWARD B.,	New York.
WOODRUFF, EDWIN H.,	Ithaca.
WOODWARD, FREDERICK C.,	Middletown.

NORTH CAROLINA.

ANDREWS, ALEXANDER BOYD, JR.,	Raleigh.
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NORTH DAKOTA.

THOMAS, W. H.,	Leeds.
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OHIO.

CLEVELAND, HARLAN,	Cincinnati.
DAY, WILLIAM R.,	Canton.
HOLLISTER, THOMAS,	Cincinnati.

PENNSYLVANIA.

LINDSEY, EDWARD,	Warren.
LIVINGOOD, FRANK S.,	Reading.
RICE, WILLIAM E.,	Warren.
SMITH, ALFRED PERCIVAL,	Philadelphia.
WAY, WILLIAM A.,	Pittsburg.

TEXAS.

PHILLIPS, NELSON,	Hillsboro.
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VIRGINIA.

COCKE, LUCIAN H.,	Roanoke.
TENNANT, W. B.,	Richmond.
THOMASON, E. B.,	Richmond.

WEST VIRGINIA.

SMITH, HARVEY F.,	Clarksburg.
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Number elected at Meeting, 68.

ELECTED BY THE EXECUTIVE COMMITTEE BETWEEN
THE MEETINGS OF 1901-1902.

ALABAMA.

BALL, FREDERICK S., Montgomery.

CALIFORNIA.

OLNEY, WARREN, San Francisco.

COLORADO.

DAVIS, WALTER W., Leadville.

DICKSON, JOHN R., Pueblo.

HAYT, CHARLES D., Denver.

WATERMAN, CHARLES W., Denver.

CONNECTICUT.

MALTBIE, THEODORE M., Granby.

DISTRICT OF COLUMBIA.

CHURCH, JOSEPH B., Washington.

FLORIDA.

AXTELL, EZRA P., Jacksonville.

BEDELL, GEORGE C., Jacksonville.

BISBEE, HORATIO, Jacksonville.

HARTRIDGE, JOHN E., Jacksonville.

ILLINOIS.

BALDWIN, JESSE A., Chicago.

FROST, E. ALLEN, Chicago.

INDIAN TERRITORY.

RALIS, JOSEPH G., Atoka.

WILLIAMS, ROBERT L., Durant.

IOWA.

ALLISON, WILLIAM B., Dubuque.

HENDERSON, DAVID B., Dubuque.

MARYLAND.

DEVECMON, WILLIAM C., Cumberland.

DOUB, ALBERT A., Cumberland.

SLOAN, D. LINDLEY, Cumberland.

WILLIAMS, FERDINAND, Cumberland.

MINNESOTA.

CHRISMAN, CHARLES E., Ortonville.

MISSOURI.

ABBOTT, A. L., St. Louis.
HOPKINS, JAMES L., St. Louis.
REYNOLDS, THOMAS H., Kansas City.

MONTANA.

SMITH, D. F., Kalispell.

NEW JERSEY.

THOMPSON, JOSEPH, Atlantic City.

NEW YORK.

ALLEN, FREDERICK I., Auburn.
BROWN, WILLIAM G., New York.
COUDERT, FREDERIC R., JR., New York.
FITCH, THEODORE, Yonkers.
FULLER, PAUL, New York.
GORDON, JAMES LINDSAY, New York.
MERCHANT, HENRY D., New York.

OREGON.

HOLMAN, FREDERICK V., Portland.

PENNSYLVANIA.

BEDFORD, J. CLAUDE, Philadelphia.
MACVEAGH, WAYNE, Philadelphia.
PENNEWILL, WALTON, Philadelphia.

RHODE ISLAND.

LITTLEFIELD, NATHAN W., Pawtucket.

SOUTH CAROLINA.

MOORE, M. HERNDON, Columbia.

SOUTH DAKOTA.

GOODNER, IVAN W., Pierre.

VIRGINIA.

ROBERTSON, WILLIAM GORDON, Roanoke.

Number elected by Executive Committee, 43.

RECAPITULATION.

Alabama,	3	Missouri,	4
Arkansas,	2	New Jersey,	2
California,	1	New York,	23
Colorado,	6	North Carolina,	1
Connecticut,	4	North Dakota,	1
District of Columbia,	7	Ohio,	3
Georgia,	5	Oregon,	1
Florida,	4	Pennsylvania,	8
Illinois,	5	Rhode Island,	1
Indiana,	2	South Carolina,	1
Indian Territory,	2	South Dakota,	1
Iowa,	3	Texas,	1
Louisiana,	1	Virginia,	4
Maryland,	5	West Virginia,	1
Massachusetts,	4		
Michigan,	1		
Minnesota,	4		
		Total,	111

MEMORANDUM.

The Annual Dinner was given on Friday, August 29th, at the Grand Union Hotel. William B. Hornblower, of New York, presided. One hundred and sixty-five members and delegates were present.

LIST OF PRESIDENTS.

1. 1878-79-*JAMES O. BROADHEAD,¹ . . St. Louis, Missouri.
2. 1879-80-*BENJAMIN H. BRISTOW, . . New York, New York.
3. 1880-81-*EDWARD J. PHELPS, . . . Burlington, Vermont.
4. 1881-82-*CLARKSON N. POTTER,² . . New York, New York.
5. 1882-83-*ALEXANDER R. LAWTON, . Savannah, Georgia.
6. 1883-84-CORTLANDT PARKER, . . . Newark, New Jersey.
7. 1884-85-*JOHN W. STEVENSON, . . . Covington, Kentucky.
8. 1885-86-WILLIAM ALLEN BUTLER, . New York, New York.
9. 1886-87-*THOMAS J. SEMMES, . . . New Orleans, Louisiana.
10. 1887-88-*GEORGE G. WRIGHT, . . . Des Moines, Iowa.
11. 1888-89-*DAVID DUDLEY FIELD, . . New York, New York.
12. 1889-90-HENRY HITCHCOCK, . . . St. Louis, Missouri.
13. 1890-91-SIMEON E. BALDWIN, . . . New Haven, Connecticut.
14. 1891-92-JOHN F. DILLON, New York, New York.
15. 1892-93-*J. RANDOLPH TUCKER, . . Lexington, Virginia.
16. 1893-94-*THOMAS M. COOLEY,³ . . . Ann Arbor, Michigan.
17. 1894-95-JAMES C. CARTER, New York, New York.
18. 1895-96-MOORFIELD STOREY, Boston, Massachusetts.
19. 1896-97-JAMES M. WOOLWORTH, . . Omaha, Nebraska.
20. 1897-98-WILLIAM WIRT HOWE, . . . New Orleans, Louisiana.
21. 1898-99-JOSEPH H. CHOATE,⁴ New York, New York.
22. 1899-1900-CHARLES F. MANDERSON, . Omaha, Nebraska.
23. 1900-1901-EDMUND WETMORE, . . . New York, New York.
24. 1901-1902-U. M. ROSE, Little Rock, Arkansas.
25. 1902-1903-FRANCIS RAWLE, Philadelphia, Pennsylvania.

* Deceased.

¹ At the Conference for organizing the Association in 1878, John H. B. Latrobe, of Maryland, was elected Temporary Chairman, and when the organization was completed, Benjamin H. Bristow, of Kentucky, was elected President of the Conference.

² In consequence of the death of Clarkson N. Potter, Francis Kernan, of New York, presided and prepared and delivered the President's Address in 1882.

³ In consequence of the illness of Thomas M. Cooley, Samuel F. Hunt, of Ohio, presided and read the President's Address prepared by Judge Cooley in 1894.

⁴ In consequence of the absence of Joseph H. Choate, as Ambassador to Great Britain, Charles F. Manderson, of Nebraska, presided and prepared and delivered the President's Address in 1899.

LIST OF SECRETARIES.

1. 1878-93-*EDWARD OTIS HINKLEY,¹ . . . Baltimore, Maryland.
2. 1893- JOHN HINKLEY,² Baltimore, Maryland.

LIST OF TREASURERS.

1. 1878-1902-FRANCIS RAWLE, Philadelphia, Penna.
2. 1902- FREDERICK E. WADHAMS, . . Albany, New York.

LIST OF EXECUTIVE COMMITTEE.

1. 1878-87-*LUKE P. POLAND, St. Johnsbury, Vermont.
2. 1878-88-SIMEON E. BALDWIN,³ New Haven, Connecticut.
3. 1878-80-*WILLIAM A. FISHER, Baltimore, Maryland.
4. 1880-85-*WILLIAM ALLEN BUTLER, . . New York, New York.
5. 1885-90-CHARLES C. BONNEY,³ Chicago, Illinois.
6. 1887-96-GEORGE A. MERCER, Savannah, Georgia.
7. 1888-90-*JOHN RANDOLPH TUCKER, . Lexington, Kentucky.
8. 1890-91-*WILLIAM P. WELLS, Detroit, Michigan.
9. 1890-99-ALFRED HEMENWAY, Boston, Massachusetts.
10. 1891-95-*BRADLEY G. SCHLEY, Milwaukee, Wisconsin.
11. 1895-99-CHARLES CLAFLIN ALLEN, . . St. Louis, Missouri.
12. 1896-97-WILLIAM WIRT HOWE, New Orleans, Louisiana.
13. 1897-1900-CHARLES NOBLE GREGORY, . Madison, Wisconsin.
14. 1899-1900-EDMUND WETMORE, New York, New York.
15. 1899-1901-U. M. ROSE, Little Rock, Arkansas.
16. 1899-1902-WILLIAM A. KETCHAM, . . Indianapolis, Indiana.
17. 1899-1902-HENRY ST. GEORGE TUCKER, Lexington, Virginia.
18. 1900- RODNEY A. MERCUR, Towanda, Pennsylvania.
19. 1900- CHARLES F. LIBBY, Portland, Maine.
20. 1901- JAMES HAGERMAN, St. Louis, Missouri.
21. 1902- P. W. MELDRIM, Savannah, Georgia.
22. 1902- PLATT ROGERS, Denver, Colorado.

* Deceased.

¹ In 1878, Francis Rawle, of Pennsylvania, and Isaac Grant Thompson, of New York, acted as temporary Secretaries and as Secretaries of the Conference.

In 1886, Edward Otis Hinkley being absent, Walter George Smith, of Pennsylvania, acted as Secretary *pro tempore*.

² In 1898, John Hinkley being absent, George P. Wanty, of Michigan, acted as Secretary *pro tempore*.

³ In 1888, at the first meeting of the Executive Committee after the adjournment of the Association, Simeon E. Baldwin resigned, and Charles C. Bonney was chosen to fill the vacancy under By-Law X.

CONSTITUTION.

NAME AND OBJECT.

ARTICLE I.—This Association shall be known as “THE AMERICAN BAR ASSOCIATION.” Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership in this Association who shall be, and shall, for five years next preceding, have been a member in good standing of the Bar of any State, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each Annual Meeting for the year ensuing: A President (the same person shall not be elected President two years in succession); one Vice-President from each State; a Secretary; a Treasurer; a Council, consisting of one member from each State (the Council shall be a standing committee on nominations for office); an Executive Committee, which shall consist of the President, the last ex-President, the Secretary, and the Treasurer, all of whom shall be *ex officio* members, together with five other members, to be chosen by the Association, but no member shall be eligible to such choice more than three years in succession; and the President, and in his absence the ex-President, shall be the Chairman of the committee.*

*Amended August 19, 1898, and August 30, 1899.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each :

- On Jurisprudence and Law Reform ;
- On Judicial Administration and Remedial Procedure ;
- On Legal Education and Admissions to the Bar ;
- On Commercial Law ;
- On International Law ;
- On Publications ;
- On Grievances ;
- *On Law Reporting and Digesting ;
- †On Patent, Trade-Mark and Copyright Law.

A majority of those members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purpose of such meeting.

The Vice-President for each State, and not less than two other members from such State, to be annually elected, shall constitute a Local Council for such State, to which shall be referred all applications for membership from such State. The Vice-President shall be, *ex officio*, Chairman of such Council.

A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the committee, be proper.

It shall be the duty of the Vice-President from each State and Territory to report the deaths of members within the same to the said committee.

ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the State to the Bar of which

*By amendment passed August 29, 1895.

†By amendment passed August 30, 1899.

the persons nominated belong. Such nominations must be transmitted in writing to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from States having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any State; *Provided*, That no nomination shall be considered by the General Council, unless accompanied by a statement in writing by at least three members of the Association from the same State with the person nominated, or, in their absence, by members from a neighboring State or States, to the effect that the person nominated has the qualifications required by the Constitution and desires to become a member of the Association, and recommending his admission as a member.

All nominations thus made or approved shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *Provided*, That if any member demand a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same State, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

During the period between the Annual Meetings, members may be elected by the Executive Committee upon the written nomination of a majority of the Vice-President and members of the Local Council of any State.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them upon the recommendation of the committee of five appointed by such Conference, shall become members of the Association upon payment of the annual dues for the current year herein provided for.

BY-LAWS.

ARTICLE VI.—By-Laws may be adopted at any Annual Meeting of the Association by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable By-Laws, which shall be in force until rescinded by the Association.

DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each Annual Meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several States and by Congress during the preceding year. It shall be the duty of the member of the General Council from each State to report to the President, on or before the first day of May, annually, any such legislation in his State.

ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any

Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present.

CONSTRUCTION.

ARTICLE XI.—The word “*State*,” whenever used in this Constitution, shall be deemed to be equivalent to *State, Territory, and the District of Columbia*.

BY-LAWS.

MEETING OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows :

- (a) Opening Address of the President.
- (b) Nominations and Election of Members.
- (c) Election of the General Council.
- (d) Reports of Secretary and Treasurer.
- (e) Report of Executive Committee.
- (f) Reports of Standing Committees :
 - On Jurisprudence and Law Reform ;
 - On Judicial Administration and Remedial Procedure ;
 - On Legal Education and Admissions to the Bar ;
 - On Commercial Law ;
 - On International Law ;
 - On Publications ;
 - On Grievances ;
 - On Law Reporting and Digesting.
- (g) Reports of Special Committees.
- (h) The Nomination of Officers.
- (i) Miscellaneous Business.
- (j) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each State Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association. In States where no State Bar Association exists, any City or County Bar Association may appoint such delegates, not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, members of the Bar of any foreign country or of any State who are not members of the Association may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The Annual Address of the President, the reports of committees, and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of reports, addresses, and papers read before the Association may be printed by the Committee on Publications for the use of their authors, not exceeding two hundred copies for each of such authors.

The Secretary and the Chairman of the Executive Committee shall endeavor to arrange with the Smithsonian Institution, or otherwise, a system of exchanges by which the *Transactions*

can be annually exchanged with those of other associations in foreign countries interested in jurisprudence or governmental affairs; and the Secretary shall exchange the *Transactions* with those of the State and Local Bar Associations; and all books thus acquired shall be bound and deposited in the charge of the New York City Bar Association, subject to the call of this Association, if it ever desires to withdraw or consult them, if the former Association agrees to such deposit.

The Secretary shall send one copy of the Report of the proceedings of this Association to the President of the United States, and to each of the Judges of the Supreme Court thereof, and to the Library of the State Department, and of the Department of Justice thereof, and to the Library of Congress, and the Library of the Supreme Court thereof, and to the Governor, and to the Chief Judge of the court of last resort of each State, and to the State Librarian thereof, and to all public law libraries, and other principal public and college libraries in the United States, and to such other persons or bodies as the Executive Committee may direct.

No resolution complimentary to an officer or member for any service performed, paper read, or address delivered shall be considered by the Association.

OFFICERS AND COMMITTEES.

VII.—The terms of office of all officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all standing committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective Chairmen shall appoint. If at any Annual Meeting of the Association any member of any committee shall be absent, the vacancy may be filled by the members of the committee present.

The Secretary of the Association shall be the Secretary of the Council.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the Chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the Chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

The traveling and other necessary expenses incurred by any committee, standing or special, for meetings of such committee, during the interval between the Annual Meetings of the Association, shall be paid by the Treasurer, on the approval and by the order of the Executive Committee, out of such appropriation, as to the Executive Committee may seem necessary in each case, on previous application in advance of its expenditure.

All committees may have their reports printed by the Secretary before the Annual Meeting of the Association; and any such report, containing any recommendation for action on the part of the Association, shall be printed, together with a draft of bill embodying the views of the committee, whenever legislation shall be proposed. Such report shall be distributed by

mail by the Secretary to all the members of the Association at least fifteen days before the Annual Meeting at which such report is proposed to be submitted. No legislation shall be recommended or approved except upon the report of a committee.*

It shall be the duty of each Vice-President and member of the General Council of this Association to endeavor to procure the enactment by the legislature of their State of each and every law recommended by the Association, and the Secretary shall furnish them with copies of each and every recommendation and draft of bill, when there shall be such draft; and whenever this Association shall by resolution recommend the enactment of any law or laws, the Secretary shall, as soon as possible, furnish a copy of the resolution to the President of each State Bar Association, with the request of this Association that such State Bar Association shall co-operate with the local Vice-President and member of the General Council of this Association in having a bill introduced in the legislature of its State containing the subject-matter recommended by such resolution, and use proper means to procure the enactment of the same into law. In every State where there is no State Bar Association, a copy of such resolution with a similar request, shall be sent to the President of the Bar Association of the principal city in such State; and in every instance where the form of bill has been recommended with the resolution, a copy of such form of bill shall also be sent with the resolution.

ANNUAL DUES.

XIII.—The Annual Dues shall be payable at the Annual Meeting in advance. If any member neglects to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

* As amended, August 29, 1902.

A member who has been dropped from the roll for non-payment of dues may be restored to membership by the Executive Committee upon the payment of all back dues. *Provided*, such restoration shall be recommended by a member of the Local Council of his State, or in their absence, at an Annual Meeting, by any two members of the Association.

XIV.—A Section of the Association, to be known as the Section of Legal Education, is hereby established, which shall meet annually in connection with the Meeting of the Association, but not during such hours as the Association is in session.

Its object shall be the discussion of methods of Legal Education, and it may make recommendations to the Association, which shall be referred by the Association to the Committee on Legal Education.

The proceedings of the Section may be published from time to time, at the discretion of the Executive Committee, and on the recommendation of the Committee on Publications.

All members of the Association, who desire, may enroll themselves as members of the Section, and persons not eligible for membership in the Association, but who are engaged in teaching law, may be admitted to the privilege of the floor at any meeting of the Section, by vote of the Section.

The Section shall be organized by the appointment of a Chairman and Secretary, at its first session; and a Chairman and Secretary shall thereafter be elected annually by the Section.

A Section of the Association, to be known as the Section of Patent, Trade-Mark* and Copyright Law, is hereby established, which shall meet annually in connection with the meeting of the Association, but not during such hours as the Association is in session.

* As amended, 1899.

Its object shall be to discuss the subject of the law and practice relating to patents, trade-marks and copyrights. It may report to the Association ; and matters relating to patents, trade-marks and copyrights may be referred to it.

The proceedings of the Section may be published from time to time, at the discretion of the Executive Committee, and on the recommendation of the Committee on Publications.

All members of the Association, who desire, may enroll themselves as members of the Section.

The Section shall be organized by the appointment of a Chairman and Secretary by the Section, and a Chairman and Secretary shall be thereafter annually elected by the Section for the year commencing upon the final adjournment of its meeting.

OFFICERS.

1902-1903.

PRESIDENT,
FRANCIS RAWLE,
Philadelphia, Pennsylvania.

SECRETARY,
JOHN HINKLEY,
215, North Charles Street, Baltimore, Maryland.

TREASURER,
FREDERICK E. WADHAMS,
34, Tweddle Building, Albany, New York.

EXECUTIVE COMMITTEE. *EX OFFICIO.*

FRANCIS RAWLE, PRESIDENT.
U. M. ROSE, LAST PRESIDENT.
JOHN HINKLEY, SECRETARY.
FREDERICK E. WADHAMS, TREASURER.

ELECTED MEMBERS.

CHARLES F. LIBBY, *Portland, Maine.*
RODNEY A. MERCUR, *Towanda, Pennsylvania.*
JAMES HAGERMAN, *St. Louis, Missouri.*
P. W. MELDRIM, *Savannah, Georgia.*
PLATT ROGERS, *Denver, Colorado.*

GENERAL COUNCIL.

STATE.	NAME.	RESIDENCE.
ALABAMA,	OSCAR R. HUNDLEY,	Huntsville.
ALASKA TERRITORY, .	MELVILLE C. BROWN,	Juneau.
ARIZONA TERRITORY, .	EVERETT E. ELLINWOOD,	Prescott.
ARKANSAS,	JOHN FLETCHER,	Little Rock.
CALIFORNIA,	CHARLES MONROE,	Los Angeles.
COLORADO,	LUCIUS W. HOYT,	Denver.
CONNECTICUT,	LYMAN D. BREWSTER,	Danbury.
DELAWARE,	ANTHONY HIGGINS,	Wilmington.
DISTRICT OF COLUMBIA, .	HENRY E. DAVIS,	Washington.
FLORIDA,	R. W. WILLIAMS,	Tallahassee.
GEORGIA,	P. W. MELDRIM,	Savannah.
IDAHO,	WILLIAM W. WOODS,	Wallace.
ILLINOIS,	LESTER L. BOND,	Chicago.
INDIAN TERRITORY, .	C. L. JACKSON,	Muscogee.
INDIANA,	WILLIAM P. BREEN,	Fort Wayne.
IOWA,	C. C. COLE,	Des Moines.
KANSAS,	JOHN D. MILLIKEN,	McPherson.
KENTUCKY,	WILLIAM H. MACKOY,	Covington.
LOUISIANA,	WILLIAM WIRT HOWE,	New Orleans.
MAINE,	CHARLES F. LIBBY,	Portland.
MARYLAND,	STEVENSON A. WILLIAMS,	Bel Air.
MASSACHUSETTS,	HENRY S. DEWEY,	Boston.
MICHIGAN,	WILLIAM L. JANUARY,	Detroit.
MINNESOTA,	HIRAM F. STEVENS, (<i>Ch'n</i>),	St. Paul.
MISSISSIPPI,	R. H. THOMPSON,	Jackson.
MISSOURI,	JAMES HAGERMAN,	St. Louis.
MONTANA,	WILBUR F. SANDERS,	Helena.
NEBRASKA,	JAMES M. WOOLWORTH,	Omaha.
NEW HAMPSHIRE,	JOSEPH W. FELLOWS,	Manchester.
NEW JERSEY,	JAMES J. BERGEN,	Somerville.
NEW MEXICO TER., . . .	THOMAS B. CATRON,	Santa Fé.

STATE.	NAME.	RESIDENCE.
NEW YORK,	WALTER S. LOGAN,	New York.
NORTH CAROLINA,	J. CRAWFORD BIGGS,	Durham.
NORTH DAKOTA,	BURLEIGH F. SPALDING,	Fargo.
OHIO,	FRANCIS B. JAMES,	Cincinnati.
OKLAHOMA TER.,	HENRY E. ASP,	Guthrie.
OREGON,	CHARLES H. CAREY,	Portland.
PENNSYLVANIA,	SIMON P. WOLVERTON,	Sunbury.
RHODE ISLAND,	AMASA M. EATON,	Providence.
SOUTH CAROLINA,	CHARLES A. WOODS,	Marion.
SOUTH DAKOTA,	CHARLES O. BAILEY,	Sioux Falls.
TENNESSEE,	E. C. CAMP,	Knoxville.
TEXAS,	F. C. DILLARD,	Sherman.
UTAH,	CHARLES S. VARIAN,	Salt Lake City.
VERMONT,	ELIHU B. TAFT,	Burlington.
VIRGINIA,	S. S. P. PATTESON,	Richmond.
WASHINGTON,	C. H. HANFORD,	Seattle.
WEST VIRGINIA,	HARVEY F. SMITH,	Clarksburg.
WISCONSIN,	R. M. BASHFORD,	Madison.
WYOMING,	CHARLES N. POTTER,	Cheyenne.

VICE-PRESIDENTS
AND
MEMBERS OF LOCAL COUNCILS.
ELECTED 1902.

ALABAMA.

Vice-President, THOMAS N. McCLELLAN, . . . Montgomery.
Local Council, GEORGE P. HARRISON, . . . Opelika.
ALEXANDER T. LONDON, . . . Birmingham.

ALASKA TERRITORY.

Vice-President, J. G. PRICE, Skagway.
Local Council, ROBERT JENNINGS, Skagway.
W. J. HILLS, Juneau.

ARIZONA TERRITORY.

Vice-President, JOHN C. HERNDON, Prescott.
Local Council, ROBERT E. MORRISON, Prescott.
WILLIAM H. BARNES, Tucson.
ELISHA M. SANFORD, Prescott.

ARKANSAS.

Vice-President, JAMES F. READ, Fort Smith.
Local Council, THOMAS B. MARTIN, Little Rock.
M. M. COHN, Little Rock.
JOSEPH M. HILL, Fort Smith.

CALIFORNIA.

Vice-President, DAVID L. WITHINGTON, . . . San Diego.
Local Council, WARREN OLNEY, San Francisco.
LYNN HELM, Los Angeles.
W. H. CHICKERING, San Francisco.
ROBERT Y. HAYNE, San Francisco.

COLORADO.

Vice-President, MOSES HALLETT, Denver.
 Local Council, PLATT ROGERS, Denver.
 HUGH BUTLER, Denver.
 CHARLES J. HUGHES, JR., . . Denver.
 CHARLES E. GAST, Pueblo.
 A. T. GUNNELL, Colorado Springs

CONNECTICUT.

Vice-President, WASHINGTON F. WILLCOX, Chester.
 Local Council, LEWIS E. STANTON, Hartford.
 TALCOTT H. RUSSELL, New Haven.
 CHARLES E. SEARLES, Putnam.
 GEORGE D. WATROUS, New Haven.
 DONALD T. WARNER, Salisbury.
 EDWIN B. GAGER, Derby.

DELAWARE.

Vice-President, GEORGE GRAY, Wilmington.
 Local Council, WILLARD SAULSBURY, . . . Wilmington.
 JOHN P. NIELDS, Wilmington.

DISTRICT OF COLUMBIA.

Vice-President, MELVILLE CHURCH, Washington.
 Local Council, CHAPIN BROWN, Washington.
 SAMUEL MADDOX, Washington.
 JAMES G. PAYNE, Washington.
 ALDIS B. BROWNE, Washington.
 J. NOTA MCGILL, Washington.
 WILLIAM A. MELOY, Washington.

FLORIDA.

Vice-President, JOHN C. AVERY, Pensacola.
 Local Council, LOUIS C. MASSEY, Orlando.
 C. D. RINEHART, Jacksonville.
 BENJ. S. LIDDON, Marianna.
 WILLIAM A. BLOUNT, Pensacola.
 D. U. FLETCHER, Jacksonville.
 WILLIAM H. BAKER, Jacksonville.
 GEORGE C. BEDELL, Jacksonville.

GEORGIA.

Vice-President, F. H. MILLER, Augusta.
 Local Council, BENJAMIN F. ABBOTT, . . . Atlanta.
 WILLIAM R. HAMMOND, . . . Atlanta.
 CHARLES L. BARTLETT, . . . Macon.

GEORGIA—Continued.

MARION W. HARRIS, Macon.
 GEORGE T. CANN, Savannah.
 W. W. GORDON, JR., Savannah.

IDAHO.

Vice-President, WILLIAM W. WOODS, Wallace.
 Local Council, ALEXANDER E. MAYHEW, . Wallace.

ILLINOIS.

Vice-President, STEPHEN S. GREGORY, . . . Chicago.
 Local Council, ADOLPH MOSES, Chicago.
 E. B. SHERMAN, Chicago.
 EDWIN BURRITT SMITH, . . Chicago.
 GEORGE A. FOLLANSBEE, . Chicago.
 ROBERT H. PARKINSON, . . Chicago.
 JAMES D. ANDREWS, Chicago.
 JOHN H. WIGMORE, Chicago.
 LYSANDER HILL, Chicago.

INDIAN TERRITORY.

Vice-President, CLIFFORD L. JACKSON, . . Muskogee.

INDIANA.

Vice-President, WILLIAM A. KETCHAM, . . Indianapolis.
 Local Council, WILLIAM L. TAYLOR, . . Indianapolis.
 TRUMAN F. PALMER, Monticello.
 MERRILL MOORES, Indianapolis.
 CHARLES MARTINDALE, . . Indianapolis.
 WILLIAM P. ROGERS, Bloomington.
 JAMES E. ROSE, Auburn.
 DANIEL FRASER, Fowler.
 JOHN MORRIS, JR., Fort Wayne.

IOWA.

Vice-President, EMLIN McCLAIN, Iowa City.
 Local Council, WILLIAM B. QUARTON, . . Algona.
 CHARLES NOBLE GREGORY, Iowa City.
 H. T. REED, Cresco.
 W. J. ROBERTS, Keokuk.
 JOHN DEERY, Dubuque.
 B. A. YOUNKER, Des Moines.

KANSAS.

Vice-President, CHARLES BLOOD SMITH, . . . Topeka.
 Local Council, FRANK L. MARTIN, . . . Hutchinson.
 PHILIP P. CAMPBELL, . . . Pittsburgh.

KENTUCKY.

Vice-President, JAMES S. PIRTLE, . . . Louisville.
 Local Council, SWAGAR SHERLEY, . . . Louisville.
 D. H. HUGHES, . . . Morganfield.
 W. O. HARRIS, . . . Louisville.
 J. R. MORTON, . . . Lexington.
 EDWARD J. McDERMOTT, . . Louisville.

LOUISIANA.

Vice-President, ERNEST B. KRUTTSCHNITT, New Orleans.
 Local Council, ERNEST T. FLORANCE, . . . New Orleans.
 THOS. J. KERNAN, . . . Baton Rouge.
 EDWIN T. MERRICK, . . . New Orleans.

MAINE.

Vice-President, LUCILLIUS A. EMERY, . . . Ellsworth.
 Local Council, FRANK M. HIGGINS, . . . Limerick.
 HANNIBAL E. HAMLIN, . . . Ellsworth.
 FREDERICK A. POWERS, . . . Houlton.
 GEORGE E. BIRD, . . . Portland.
 WILLIAM B. SKELTON, . . . Lewiston.

MARYLAND.

Vice-President, SAMUEL D. SCHMUCKER, . . Baltimore.
 Local Council, THOMAS J. MORRIS, . . . Baltimore.
 JOHN P. BRISCOE, . . . Prince Frederick.
 GEORGE M. SHARP, . . . Baltimore.
 ROBERT R. HENDERSON, . . Cumberland.
 CONWAY W. SAMS, . . . Baltimore.
 RICHARD BERNARD, . . . Baltimore.
 THOMAS H. ROBINSON, . . . Bel Air.
 JOHN S. WIRT, . . . Elkton.

MASSACHUSETTS.

Vice-President, M. F. DICKINSON, . . . Boston.
 Local Council, ALFRED HEMENWAY, . . . Boston.
 SAMUEL C. BENNETT, . . . Boston.
 WILLIAM V. KELLEN, . . . Boston.
 JOSEPH H. BEALE, JR., . . . Cambridge.

MICHIGAN.

Vice-President, GEORGE P. WANTY, Grand Rapids.
 Local Council, ADOLPH SLOMAN, Detroit.
 HARRY B. HUTCHINS, . . . Ann Arbor.
 ARTHUR C. DENISON, . . . Grand Rapids.

MINNESOTA.

Vice-President, FREDERICK V. BROWN, . . Minneapolis.
 Local Council, ROME G. BROWN, Minneapolis.
 AMBROSE TIGHE, St. Paul.
 CHARLES S. ALBERT, . . . Minneapolis.
 WILLIAM A. LANCASTER, . Minneapolis.
 A. F. MASON, St. Paul.

MISSISSIPPI.

Vice-President, CHARLES B. HOWRY, . . . Oxford.
 Local Council, R. H. THOMPSON, Jackson.

MISSOURI.

Vice-President, G. A. FINKELNBERG, . . . St. Louis.
 Local Council, SHEPARD BARCLAY, . . . St. Louis.
 SELDEN P. SPENCER, . . . St. Louis.
 JACOB KLEIN, St. Louis.
 MARION C. EARLY, St. Louis.
 HENRY D. ASHLEY, Kansas City.
 GARDINER LATHROP, . . . Kansas City.
 J. McD. TRIMBLE, Kansas City.
 FREDERICK N. JUDSON, . . St. Louis.
 THOMAS H. REYNOLDS, . . . Kansas City.
 WALTOUR M. ROBINSON, . . Jefferson City.
 ADIEL SHERWOOD, St. Louis.

MONTANA.

Vice-President, JOHN W. COTTER, Butte.
 Local Council, WILLIAM SCALLON, Butte.

NEBRASKA.

Vice-President, IRVING F. BAXTER, . . . Omaha.
 Local Council, EDMUND M. BARTLETT, . . Omaha.
 WILLIAM D. McHUGH, . . . Omaha.
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BRECKENRIDGE, RALPH W.,	Omaha, Neb.
BREEN, JOHN P.,	Omaha, Neb.
BREEN, WILLIAM P.,	Fort Wayne, Ind.
BREWER, DAVID J.,	Washington, D. C.
BREWSTER, LYMAN D.,	Danbury, Conn.
BRICE, ALBERT G.,	New Orleans, La.
BRIDGERS, JOHN L.,	Tarboro, N. C.
BRIGHTLY, F. F.,	Philadelphia, Pa.
BRISCOE, CHARLES H.,	Hartford, Conn.
BRISCOE, JOHN P.,	Prince Frederick, Md.
BRITT, E. W.,	Los Angeles, Cal.
BROGAN, FRANCIS A.,	Omaha, Neb.
BROOKS, FRANCIS A.,	Boston, Mass.
BROOKS, FRANKLIN E.,	Colorado Springs, Col.
BROWN, ADDISON,	New York, N. Y.
BROWN, CHAPIN,	Washington, D. C.
BROWN, CHARLES A.,	Chicago, Ill.
BROWN, EDWARD T.,	Atlanta, Ga.

BROWN, FRANCIS SHUNK,	Philadelphia, Pa.
BROWN, FREDERICK V.,	Minneapolis, Minn.
BROWN, J. HAY,	Lancaster, Pa.
BROWN, JOHN A.,	Philadelphia, Pa.
BROWN, JOHN DOUGLASS, JR.,	Philadelphia, Pa.
BROWN, MELVILLE C. (Juneau, Alaska),	Laramie, Wyo.
BROWN, ROME G.,	Minneapolis, Minn.
BROWN, STEWART,	Baltimore, Md.
BROWN, TAYLOR E.,	Chicago, Ill.
BROWN, WILLIAM G.,	New York, N. Y.
BROWNE, ALDIS B.,	Washington, D. C.
BROWNE, ARTHUR S.,	Washington, D. C.
BRUCE, ANDREW A.,	Grand Forks, N. D.
BRUCE, HELM,	Louisville, Ky.
BRUNO, RICHARD M.,	New York, N. Y.
BRYAN, GEORGE,	Richmond, Va.
BRYAN, P. TAYLOR,	St. Louis, Mo.
BRYANT, WM. H.,	Denver, Col.
BUCHANAN, CHARLES J.,	Albany, N. Y.
BUCHANAN, JAMES,	Trenton, N. J.
BUCHER, JOSEPH C.,	Lewisburg, Pa.
BUCKLER, WILLIAM H.,	Baltimore, Md.
BUDD, HENRY,	Philadelphia, Pa.
BUIST, GEORGE LAMB,	Charleston, S. C.
BUIST, HENRY,	Charleston, S. C.
BULLITT, THOMAS W.,	Louisville, Ky.
BULLITT, WILLIAM MARSHALL,	Louisville, Ky.
BULLOCK, A. G.,	Worcester, Mass.
BUMPUS, EVERETT C.,	Boston, Mass.
BUNDY, MCGEORGE,	Grand Rapids, Mich.
BURDICK, CHARLES W.,	Cheyenne, Wyo.
BURDICK, FRANCIS M.,	New York, N. Y.
BURGES, WILLIAM H.,	El Paso, Tex.
BURK, W. D.,	Muscatine, Iowa.
BURKE, JOHN F.,	Milwaukee, Wis.
BURKE, TIMOTHY F.,	Cheyenne, Wyo.
BURKET, HARLAN F.,	Findlay, Ohio.
BURKET, JACOB F.,	Findlay, Ohio.
BURLEIGH, ALVIN,	Plymouth, N. H.
BURNELL, GEORGE W.,	Oshkosh, Wis.
BURNETT, WILLIAM H.,	Philadelphia, Pa.
BURNHAM, HENRY E.,	Manchester, N. H.
BURNHAM, TELFORD,	Chicago, Ill.
BURNS, CHARLES H.,	Nashua, N. H.
BURR, CHARLES L.,	New York, N. Y.

BURROUGHS, BENJAMIN R.,	Edwardsville, Ill.
BURRY, WILLIAM,	Chicago, Ill.
BUSBEE, FABIVS H.,	Raleigh, N. C.
BUSHNELL, T. H.,	Cleveland, Ohio.
BUSHNELL, WILLIAM S.,	Monticello, Ind.
BUTLER, CHARLES HENRY,	New York, N. Y.
BUTLER, HUGH,	Denver, Col.
BUTLER, NOBLE C.,	Indianapolis, Ind.
BUTLER, WILLIAM ALLEN, JR.,	New York, N. Y.
BUTTON, FREDERICK H.,	Rutland, Vt.
BUTTON, WILLIAM H.,	New York, N. Y.
BYRNE, JAMES,	New York, N. Y.
CABELL, JAMES ALSTON,	Richmond, Va.
CADWELL, JAMES P.,	Jefferson, Ohio.
CAFFERY, DONELSON,	Franklin, La.
CAHN, EDGAR M.,	New Orleans, La.
CALHOUN, PAT.,	Cleveland, Ohio.
CALLAGHAN, ALEXANDER J. A.,	New York, N. Y.
CAMP, E. C.,	Knoxville, Tenn.
CAMPBELL, CHARLES H.,	Detroit, Mich.
CAMPBELL, CHARLES M.,	Denver, Col.
CAMPBELL, HENRY M.,	Detroit, Mich.
CAMPBELL, LEMUEL R.,	Nashville, Tenn.
CAMPBELL, NORMAN M.,	Colorado Springs, Col.
CAMPBELL, PHILIP P.,	Pittsburg, Kan.
CANADAY, WALTER,	Madrid, Iowa.
CANN, GEORGE T.,	Savannah, Ga.
CANN, J. FERRIS,	Savannah, Ga.
CANTRELL, DEADERICK H.,	Little Rock, Ark.
CAPEN, CHARLES L.,	Bloomington, Ill.
CAREY, CHARLES H.,	Portland, Ore.
CAREY, FRANCIS K.,	Baltimore, Md.
CARLOCK, R. L.,	Fort Worth, Tex.
CARPENTER, M. B.,	Denver, Col.
CARPENTER, SAMUEL L.,	Denver, Col.
CARR, WILLIAM F.,	Cleveland, Ohio.
CARROLL, WILLIAM H.,	Memphis, Tenn.
CARSON, HAMPTON L.,	Philadelphia, Pa.
CARSON, JOHN F.,	Indianapolis, Ind.
CARTER, JAMES C.,	New York, N. Y.
CARTER, WALTER S.,	New York, N. Y.
CARVER, EUGENE P.,	Boston, Mass.
CARY, ALFRED L.,	Milwaukee, Wis.
CATE, ALBION,	Chicago, Ill.
CATLIN, F. D.,	Montrose, Col.

CATON, JAMES R.,	Alexandria, Va.
CATRON, THOMAS B.,	Santa Fe, N. Mex.
CAVENDER, CHARLES,	Leadville, Col.
CHADBOURNE, THOMAS L.,	Houghton, Mich.
CHAMBERS, FRANCIS T.,	Philadelphia, Pa.
CHAMBERS, SMILEY N.,	Indianapolis, Ind.
CHAMPLIN, EDGAR R.,	Boston, Mass.
CHANCELLOR, JUSTUS,	Chicago, Ill.
CHANDLER, ALFRED D.,	Boston, Mass.
CHARLES, BENJAMIN H.,	St. Louis, Mo.
CHARLTON, WALTER G.,	Savannah, Ga.
CHASE, GEORGE,	New York, N. Y.
CHASE, IRA A.,	Bristol, N. H.
CHICKERING, W. H.,	San Francisco, Cal.
CHITTENDEN, G. I.,	Denver, Col.
CHOATE, JOSEPH H.,	New York, N. Y.
CHRISMAN, CHARLES E.,	Ortonville, Minn.
CHRISTIE, HARVEY L.,	St. Louis, Mo.
CHRISTY, GEORGE H.,	Pittsburg, Pa.
CHURCH, JOSEPH B.,	Washington, D. C.
CHURCH, MELVILLE,	Washington, D. C.
CHURCHILL, EDMUND J.,	Denver, Col.
CLAPHAM, WILLIAM E.,	Bloomington, Ind.
CLAPP, ROBERT P.,	Lexington, Mass.
CLARK, GIBSON,	Cheyenne, Wyo.
CLARK, I. R.,	Boston, Mass.
CLARK, JAMES GARDNER,	New Haven, Conn.
CLARK, MARTIN,	Buffalo, N. Y.
CLARKE, ENOS,	St. Louis, Mo.
CLARKE, GEORGE E.,	South Bend, Ind.
CLARKE, JOHN H.,	Cleveland, Ohio.
CLEMENT, L. H.,	Salisbury, N. C.
CLEVELAND, HARLAN,	Cincinnati, Ohio.
CLEVINGER, WILLIAM M.,	Atlantic City, N. J.
CLIFFORD, CHARLES W.,	New Bedford, Mass.
CLIGGETT, JOHN,	Mason City, Iowa.
COCHRAN, ALEXANDER G.,	St. Louis, Mo.
COCKE, LUCIAN H.,	Roanoke, Va.
COCKRAN, W. BOURKE,	New York, N. Y.
COCKRILL, ASHLEY,	Little Rock, Ark.
COHEN, EMANUEL,	Minneapolis, Minn.
COHN, M. M.,	Little Rock, Ark.
COKE, HENRY C.,	Dallas, Texas.
COKE, JOHN A.,	Richmond, Va.
COLBY, JAMES F.,	Hanover, N. H.

COLE, C. C.,	Des Moines, Iowa.
COLIE, EDWARD M.,	Newark, N. J.
COLLIER, M. DWIGHT,	New York, N. Y.
COLLINS, JAMES H.,	Columbus, Ohio.
COLSTON, EDWARD,	Cincinnati, Ohio.
COLTON, WILLIAM,	Baltimore, Md.
CONANT, GEORGE A.,	Hartford, Conn.
COOK, CHARLES SUMNER,	Portland, Me.
COOK, E. S.,	Cleveland, Ohio.
COOK, WILLIAM W.,	New York, N. Y.
COOLIDGE, WILLIAM H.,	Boston, Mass.
COOPER, EDMUND,	Shelbyville, Tenn.
COPELAND, ALFRED M.,	Springfield, Mass.
CORBET, BURKE,	San Francisco, Cal.
CORCORAN, GEORGE F.,	York, Neb.
CORCORAN, JOHN W.,	Boston, Mass.
CORN, SAMUEL T.,	Cheyenne, Wyo.
CORTHELL, NELLIS E.,	Laramie, Wyo.
COSTIGAN, EDWARD P.,	Denver, Col.
COSTIGAN, GEORGE P., JR.,	Denver, Col.
COTTER, JAMES E.,	Boston, Mass.
COTTER, JOHN W.,	Butte, Mont.
COUDERT, FREDERIC R., JR.,	New York, N. Y.
COWEN, JOHN K.,	Baltimore, Md.
COWIN, J. C.,	Omaha, Neb.
COWLES, ISRAEL T.,	Detroit, Mich.
COXE, H. C. (Paris, France),	New York, N. Y.
CRAIG, JOHN E.,	Keokuk, Iowa.
CRANE, ALBERT,	Grand Rapids, Mich.
CRAPO, WILLIAM W.,	New Bedford, Mass.
CRAWFORD, COE I.,	Huron, S. D.
CRITCHLOW, EDWARD B.,	Salt Lake City, Utah.
CROCKER, GEORGE G.,	Boston, Mass.
CROSBY, JAMES O.,	Garnavillo, Iowa.
CROSS, DAVID,	Manchester, N. H.
CROSS, E. J. D.,	Baltimore, Md.
CROVATT, A. J.,	Brunswick, Ga.
CULVER, M. EUGENE,	Middletown, Conn.
CUMMING, JOSEPH B.,	Augusta, Ga.
CUMMINS, A. B.,	Des Moines, Iowa.
CUNNEEN, JOHN,	Buffalo, N. Y.
CUNNINGHAM, FREDERIC,	Boston, Mass.
CUNNINGHAM, HENRY C.,	Savannah, Ga.
CUNNINGHAM, T. M., JR.,	Savannah, Ga.
CURTIS, HARRY C.,	Providence, R. I.

CURTIS, JULIUS B.,	Stamford, Conn.
CURTIS, LEONARD E.,	Colorado Springs, Col.
CURTIS, WILLIAM S.,	St. Louis, Mo.
CUSHING, WILLIAM E.,	Cleveland, Ohio.
CUTHBERT, LUCIUS M.,	Denver, Col.
CUYLER, THOMAS DEWITT,	Philadelphia, Pa.
DABNEY, L. S.,	Boston, Mass.
DALE, RICHARD C.,	Philadelphia, Pa.
DANA, SAMUEL W.,	New Castle, Pa.
DANAHER, FRANKLIN M.,	Albany, N. Y.
DANIELS, EDWARD,	Indianapolis, Ind.
DANIELS, FRANCIS B.,	Chicago, Ill.
DART, HENRY P.,	New Orleans, La.
DAVIES, JULIAN T.,	New York, N. Y.
DAVIES, WILLIAM GILBERT,	New York, N. Y.
DAVIS, HARRY C.,	Denver, Col.
DAVIS, HENRY E.,	Washington, D. C.
DAVIS, JAMES C.,	Keokuk, Iowa.
DAVIS, SIMON,	Boston, Mass.
DAVIS, SYDNEY B.,	Terre Haute, Ind.
DAVIS, THEODORE P.,	Indianapolis, Ind.
DAVIS, VERNON M.,	New York, N. Y.
DAVIS, WALTER W.,	Leadville, Col.
DAVISON, CHARLES M.,	Saratoga Springs, N. Y.
DAWKINS, WALTER I.,	Baltimore, Md.
DAWSON, CLYDE C.,	Canon City, Col.
DAWSON, WILLIAM H.,	Baltimore, Md.
DAY, WILLIAM R.,	Canton, Ohio.
DEAN, O. H.,	Kansas City, Mo.
DECKER, WESTBROOK S.,	Denver, Col.
DEERING, JAMES A.,	New York, N. Y.
DEERY, JOHN,	Dubuque, Iowa.
DELACY, JOHN F.,	Eastman, Ga.
DEMBITZ, LEWIS N.,	Louisville, Ky.
DEMPSEY, JAMES H.,	Cleveland, Ohio.
DENEEN, CHARLES S.,	Chicago, Ill.
DENÉGRE, GEORGE,	New Orleans, La.
DENÉGRE, WALTER D.,	New Orleans, La.
DENISON, ARTHUR C.,	Grand Rapids, Mich.
DENISON, HOWARD P.,	Syracuse, N. Y.
DENT, THOMAS,	Chicago, Ill.
DEPEW, CHAUNCEY M.,	New York, N. Y.
DEVECMON, WILLIAM C.,	Cumberland, Md.
DEVITT, J. F.,	Muscatine, Iowa.
DEWESE, J. W.,	Lincoln, Neb.

DEWEY, HENRY S.,	Boston, Mass.
DICKINSON, DON M.,	Detroit, Mich.
DICKINSON, J. M.,	Chicago, Ill.
DICKINSON, M. F.,	Boston, Mass.
DICKINSON, S. MEREDITH,	Trenton, N. J.
DICKMAN, FRANKLIN J.,	Cleveland, Ohio.
DICKSON, JOHN R.,	Pueblo, Col.
DICKSON, SAMUEL,	Philadelphia, Pa.
DILLARD, F. C.,	Sherman, Texas.
DILLAWAY, W. E. L.,	Boston, Mass.
DILLE, JOHN I.,	Des Moines, Iowa.
DILLON, JOHN F.,	New York, N. Y.
DIMMITT, GEORGE Z.,	Denver, Col.
DINES, ORVILLE L.,	Denver, Col.
DINES, TYSON S.,	Denver, Col.
DIXON, WILLIAM W.,	Butte, Mont.
DOBSON, CHARLES L.,	Kansas City, Mo.
DODGE, FREDERIC,	Boston, Mass.
DODGE, WILLIAM W.,	Washington, D. C.
DONALDSON, WILLIAM R.,	St. Louis, Mo.
DOOLEY, P. C.,	Little Rock, Ark.
DOS PASSOS, JOHN R.,	New York, N. Y.
DOTY, SPENCER C.,	New York, N. Y.
DOUB, ALBERT A.,	Cumberland, Md.
DOUD, A. L.,	Denver, Col.
DOUGHERTY, J. HAMPDEN,	New York, N. Y.
DOUGLAS, WAITER B.,	St. Louis, Mo.
DOWELL, JULIAN C.,	Washington, D. C.
DOWNER, SYLVESTER S.,	Boulder, Col.
DOYLE, JOHN H.,	Toledo, Ohio.
DOYLE, LOUIS F.,	New York, N. Y.
DREW, WILLIAM L.,	Urbana, Ill.
DRIGGS, FREDERICK E.,	Detroit, Mich.
DUANE, RUSSELL,	Philadelphia, Pa.
DUBIGNON, FLEMING G.,	Savannah, Ga.
DUELL, CHARLES H.,	New York, N. Y.
DUFF, R. C.,	Beaumont, Texas.
DUFFIELD, HENRY M.,	Detroit, Mich.
DUNCOMBE, JOHN F.,	Fort Dodge, Iowa.
DUNDEY, CHARLES L.,	Omaha, Neb.
DUNKLER, GEORGE F.,	Denver, Col.
DUNN, MICHAEL,	Paterson, N. J.
DURAND, LORENZO T.,	Saginaw, E. S., Mich.
DURBAN, FRANK A.,	Zanesville, Ohio.
DUTTON, JOHN A.,	New York, N. Y.

DuVal, Ben. T.,	Fort Smith, Ark.
Dye, John T.,	Indianapolis, Ind.
Dyer, Richard N.,	New York, N. Y.
Dyrenforth, Philip C.,	Chicago, Ill.
Dyrenforth, William H.,	Chicago, Ill.
Early, Marion C.,	St. Louis, Mo.
Eastman, Samuel C.,	Concord, N. H.
Eastman, Sidney C.,	Chicago, Ill.
Eaton, Amasa M.,	Providence, R. I.
Eaton, W. L.,	Osage, Iowa.
Eckstein, O. G.,	Wichita, Kan.
Edmonston, William E.,	Washington, D. C.
Edson, Joseph R.,	Washington, D. C.
Edwards, Peyton F.,	El Paso, Texas.
Elgutter, Charles S.,	Omaha, Neb.
Eliot, Edward C.,	St. Louis, Mo.
Ellinwood, Everett E.,	Prescott, Arizona.
Elliott, Charles B.,	Minneapolis, Minn.
Elliott, William F.,	Indianapolis, Ind.
Ellis, W. D.,	Atlanta, Ga.
Ellis, W. T.,	Owensboro, Ky.
Ely, John J.,	Freehold, N. J.
Emery, John R.,	Morristown, N. J.
Emery, Lucillius A.,	Ellsworth, Me.
Erwin, R. G.,	Savannah, Ga.
Estabrook, Henry D.,	New York, N. Y.
Evans, Rowland,	Indianapolis, Ind.
Ewing, Hampton D.,	Yonkers, N. Y.
Ewing, John A.,	Leadville, Col.
Fairbanks, Chas. W.,	Indianapolis, Ind.
Fairchild, H. O.,	Green Bay, Wis.
Fall, George Howard,	Malden, Mass.
Farquhar, Guy E.,	Pottsville, Pa.
Farrar, Edgar H.,	New Orleans, La.
Farbans, George H.,	New York, N. Y.
Fellows, Joseph W.,	Manchester, N. H.
Fenton, Hector T.,	Philadelphia, Pa.
Fentress, James,	Chicago, Ill.
Ferguson, E. A.,	Cincinnati, Ohio.
Ferris, Aaron A.,	Cincinnati, Ohio.
Fesler, James William,	Indianapolis, Ind.
Field, Frank Harvey,	Brooklyn, N. Y.
Field, Heman H.,	Chicago, Ill.
Fiero, J. Newton,	Albany, N. Y.
Finkelburg, G. A.,	St. Louis, Mo.

FISH, FREDERICK P.,	Boston, Mass.
FISHER, ROBERT J.,	Washington, D. C.
FISHER, SAMUEL T.,	Washington, D. C.
FISHER, WILLIAM RIGHTER,	Philadelphia, Pa.
FISSE, WILLIAM E.,	St. Louis, Mo.
FITCH, THEODORE,	Yonkers, N. Y.
FITZGERALD, JOHN C.,	Grand Rapids, Mich.
FLANDERS, JAMES G.,	Milwaukee, Wis.
FLANDRAU, CHARLES E.,	St. Paul, Minn.
FLEISCHMANN, SIMON,	Buffalo, N. Y.
FLETCHER, D. U.,	Jacksonville, Fla.
FLETCHER, JOHN,	Little Rock, Ark.
FLORANCE, ERNEST T.,	New Orleans, La.
FLOWER, JAMES M.,	Chicago, Ill.
FOLLANSBEE, GEORGE A.,	Chicago, Ill.
FOLLETT, ALFRED DEWEY,	Marietta, Ohio.
FOLLETT, MARTIN DEWEY,	Marietta, Ohio.
FOOTE, ROBERT E.,	Denver, Col.
FORBES, FRANCIS,	New York, N. Y.
FORMAN, BENJAMIN RICE,	New Orleans, La.
FORSTER, GEORGE M.,	Spokane, Wash.
FORT, J. FRANKLIN,	Newark, N. J.
FOSTER, ALFRED D.,	Boston, Mass.
FOSTER, CHARLES E.,	Washington, D. C.
FOSTER, REGINALD,	Boston, Mass.
FOSTER, ROGER,	New York, N. Y.
FOWLER, A. C.,	St. Louis, Mo.
FOWLER, A. J.,	Denver, Col.
FOWLER, JO. A.,	Denver, Col.
FOX, AUSTEN G.,	New York, N. Y.
FOX, E. J.,	Easton, Pa.
FOX, JABEZ,	Boston, Mass.
FRALEY, JOSEPH C.,	Philadelphia, Pa.
FRASER, DANIEL,	Fowler, Ind.
FRAZIER, ROBERT T.,	Washington, D. C.
FRENCH, WILLIAM B.,	Boston, Mass.
FREY, PHILIP W.,	Evansville, Ind.
FRIEDMAN, LEE M.,	Boston, Mass.
FRINK, J. S. H.,	Portsmouth, N. H.
FROST, E. ALLEN,	Chicago, Ill.
FROST, EDWARD W.,	Milwaukee, Wis.
FULLER, CLIFFORD W.,	Cleveland, Ohio.
FULLER, GEORGE,	San Diego, Cal.
FULLER, PAUL,	New York, N. Y.
FURNESS, WILLIAM ELIOT,	Chicago, Ill.

GABBERT, WILLIAM H.,	Denver, Col.
GABRIEL, JOHN H.,	Denver, Col.
GAGER, EDWIN B.,	Derby, Conn.
GAINES, R. R.,	Austin, Texas.
GAITHER, GEORGE R., JR.,	Baltimore, Md.
GALLAGHER, CHARLES T.,	Boston, Mass.
GANS, EDGAR H.,	Baltimore, Md.
GANTT, JAMES B.,	Jefferson City, Mo.
GARDNER, JOHN M.,	New York, N. Y.
GARFIELD, HARRY A.,	Cleveland, Ohio.
GARFIELD, JAMES R.,	Cleveland, Ohio.
GARGAN, THOMAS J.,	Boston, Mass.
GARLAND, SPOTTSWOOD,	Wilmington, Del.
GARNETT, THEODORE S.,	Norfolk, Va.
GARRARD, LOUIS F.,	Columbus, Ga.
GARRETSON, A. Q.,	Morristown, N. J.
GARTSIDE, JOHN M.,	Chicago, Ill.
GAST, CHARLES E.,	Pueblo, Col.
GEDDES, FREDERICK L.,	Toledo, Ohio.
GEISTHARDT, STEPHEN L.,	Lincoln, Neb.
GEYELIN, HENRY LAUSSAT,	Philadelphia, Pa.
GIBBONS, JOHN,	Chicago, Ill.
GIBBS, CLINTON B.,	Buffalo, N. Y.
GIBSON, JAMES,	Kansas City, Mo.
GIBSON, JAMES A.,	Los Angeles, Cal.
GIDDINGS, CHARLES,	Great Barrington, Mass.
GIFFORD, LIVINGSTON,	New York, N. Y.
GILBERT, GEORGE G.,	Shelbyville, Ky.
GILBERT, LYMAN D.,	Harrisburg, Pa.
GILES, BRANCH H.,	Denver, Col.
GILLEN, WILLIAM W.,	Jamaica, N. Y.
GILLIAM, MARSHALL M.,	Richmond, Va.
GILMORE, JAMES H.,	Marion, Va.
GILSON, N. S.,	Fond du Lac, Wis.
GIVEN, WILLIAM B.,	Columbia, Pa.
GLASGOW, WILLIAM A., JR.,	Roanoke, Va.
GLEASON, JOHN H.,	Albany, N. Y.
GOBLE, L. SPENCER,	Newark, N. J.
GODDARD, LUTHER M.,	Denver, Col.
GOETCHIUS, HENRY R.,	Columbus, Ga.
GOFF, FREDERICK H.,	Cleveland, Ohio.
GOODELL, EDWIN B.,	Montclair, N. J.
GOODELLE, WILLIAM P.,	Syracuse, N. Y.
GOODNER, IVAN W.,	Pierre, S. D.
GOODRICH, ADAMS A.,	Chicago, Ill.

GOODWIN, FRANK,	Boston, Mass.
GORDON, JAMES LINDSAY,	New York, N. Y.
GORDON, JOHN A.,	Denver, Col.
GORDON, W. W., JR.,	Savannah, Ga.
GOULD, GEORGE H.,	Palestine, Tex.
GOULD, JOHN H.,	Delphi, Ind.
GOULDER, HARVEY D.,	Cleveland, Ohio.
GOVE, FRANK E.,	Denver, Col.
GRACE, H. H.,	West Superior, Wis.
GRAHAM, GEORGE S.,	Philadelphia, Pa.
GRANGER, MOSES M.,	Zanesville, Ohio.
GRANT, ALEXANDER, JR.,	Newark, N. J.
GRAVES, CHARLES A.,	Charlottesville, Va.
GRAY, GEORGE,	Wilmington, Del.
GRAY, JOHN C.,	Boston, Mass.
GREELEY, ARTHUR P.,	Washington, D. C.
GREELEY, WILLIAM B.,	New York, N. Y.
GREEN, BENJAMIN W.,	Emporium, Pa.
GREEN, J. W.,	Lawrence, Kan.
GREENE, CHARLES J.,	Omaha, Neb.
GREENE, FREDERICK L.,	Greenfield, Mass.
GREENE, GEORGE G.,	Green Bay, Wis.
GREENE, ROBERT J.,	Lincoln, Neb.
GREGG, FRANK E.,	Denver, Col.
GREGG, MAURICE,	Baltimore, Md.
GREGORY, CHARLES NOBLE,	Iowa City, Iowa.
GREGORY, ROGER,	Richmond, Va.
GREGORY, STEPHEN S.,	Chicago, Ill.
GREY, SAMUEL H.,	Camden, N. J.
GRIER, ALBERT E.,	Denver, Col.
GRIFFIN, S.,	Bedford City, Va.
GRIFFITH, WARREN G.,	Philadelphia, Pa.
GRIGGS, JOHN W.,	Paterson, N. J.
GRINNAN, DANIEL,	Richmond, Va.
GRINNELL, W. MORTON,	New York, N. Y.
GROSSCUP, PETER S.,	Chicago, Ill.
GROZIER, JOSHUA,	Denver, Col.
GRUBBS, CHARLES S.,	Louisville, Ky.
GUERNSEY, NATHANIEL T.,	Des Moines, Iowa.
GUNCKEL, LEWIS B.,	Dayton, Ohio.
GUNNELL, A. T.,	Colorado Springs, Col.
GUNTER, JULIUS C.,	Denver, Col.
GUTHRIE, GEORGE W.,	Pittsburg, Pa.
GUTHRIE, WILLIAM D.,	New York, N. Y.
GUY, JACKSON,	Richmond, Va.

HADDEN, ALEXANDER,	Cleveland, Ohio.
HAGERMAN, FRANK,	Kansas City, Mo.
HAGERMAN, JAMES,	St. Louis, Mo.
HAGGOTT, W. A.,	Idaho Springs, Col.
HAGNER, ALEXANDER B.,	Washington, D. C.
HAHN, WILLIAM J.,	Minneapolis, Minn.
HAINER, BAYARD T.,	Perry, O. T.
HAINER, EUGENE J.,	Aurora, Neb.
HAINES, ROBERT M.,	Grinnell, Iowa.
HALE, CLARENCE,	Portland, Me.
HALL, ALBERT H.,	Minneapolis, Minn.
HALL, BORDMAN,	Boston, Mass.
HALL, CHARLES J. G.,	New York, N. Y.
HALL, EDMUND,	Detroit, Mich.
HALL, HARRY H.,	New Orleans, La.
HALL, HENRY C.,	Colorado Springs, Col.
HALL, MATTHEW A.,	Omaha, Neb.
HALL, THOMAS L.,	Chicago, Ill.
HALL, WILLIAM M., JR.,	Pittsburg, Pa.
HALLETT, MOSES,	Denver, Col.
HAMILL, HUGH H.,	Trenton, N. J.
HAMILTON, ALEXANDER,	Petersburg, Va.
HAMILTON, GEORGE EARNEST,	Washington, D. C.
HAMLIN, CHARLES,	Bangor, Me.
HAMLIN, HANNIBAL E.,	Ellsworth, Me.
HAMLIN, JOHN H.,	Chicago, Ill.
HAMMOND, EDWIN P.,	La Fayette, Ind.
HAMMOND, WILLIAM R.,	Atlanta, Ga.
HAMMOND, WM. S.,	Altoona, Pa.
HANCHETT, BENTON,	Saginaw, W. S., Mich.
HANFORD, C. H.,	Seattle, Wash.
HANSEN, OTTO R.,	Milwaukee, Wis.
HARDCASTLE, THOMAS H.,	Denver, Col.
HARDIN, JOHN R.,	Newark, N. J.
HARDING, CHARLES F.,	Chicago, Ill.
HARGEST, WILLIAM M.,	Harrisburg, Pa.
HARKLESS, JAMES H.,	Kansas City, Mo.
HARLAN, HENRY D.,	Baltimore, Md.
HARLAN, JOHN MARSHALL,	Washington, D. C.
HARLEY, CHARLES F.,	Baltimore, Md.
HARMON, HENRY A.,	Detroit, Mich.
HARMON, JUDSON,	Cincinnati, Ohio.
HARPER, JACOB CHANDLER,	Cincinnati, Ohio.
HARRIMAN, EDWARD AVERY,	Derby, Conn.
HARRIS, MARION W.,	Macon, Ga.

HARRIS, STEPHEN R.,	Bucyrus, Ohio.
HARRIS, W. O.,	Louisville, Ky.
HARRISON, GEORGE P.,	Opelika, Ala.
HARRISON, LYNDE,	New Haven, Conn.
HARRISON, RICHARD A.,	Columbus, Ohio.
HARRISON, WILLIAM B.,	Denver, Col.
HARRITY, WILLIAM F.,	Philadelphia, Pa.
HARSHA, WALTER S.,	Detroit, Mich.
HART, W. O.,	New Orleans, La.
HARTIGAN, MICHEL A.,	Hastings, Neb.
HARTRIDGE, JOHN E.,	Jacksonville, Fla.
HARTSHORNE, CHARLES H.,	Jersey City, N. J.
HASTINGS, W. G.,	Wilbur, Neb.
HATCH, REUBEN,	Grand Rapids, Mich.
HATFIELD, I. H.,	Lincoln, Neb.
HATTON, GOODRICH,	Portsmouth, Va.
HAWES, GILBERT RAY,	New York, N. Y.
HAWKESWORTH, R. W.,	New York, N. Y.
HAWKINS, ROSCOE O.,	Indianapolis, Ind.
HAYDEN, GEORGE,	Ishpeming, Mich.
HAYDEN, JAMES H.,	Washington, D. C.
HAYES, THOMAS G.,	Baltimore, Md.
HAYNE, ROBERT Y.,	San Francisco, Cal.
HAYNES, H. N.,	Greeley, Col.
HAYT, CHARLES D.,	Denver, Col.
HEARD, FREDERIC S.,	Chicago, Ill.
HEERMANCE, MARTIN,	Poughkeepsie, N. Y.
HEISKELL, F. H.,	Memphis, Tenn.
HELM, JAMES P.,	Louisville, Ky.
HELM, LYNN,	Los Angeles, Cal.
HEMENWAY, ALFRED,	Boston, Mass.
HEMPHILL, JOSEPH,	West Chester, Pa.
HENDERSON, DAVID B.,	Dubuque, Iowa.
HENDERSON, JOHN M.,	Cleveland, Ohio.
HENDERSON, ROBERT R.,	Cumberland, Md.
HENSEL, W. U.,	Lancaster, Pa.
HEPBURN, CHARLES M.,	Cincinnati, Ohio.
HERBENDEEN, EDWARD G.,	Elmira, N. Y.
HERNDON, JOHN C.,	Prescott, Arizona.
HEROD, WILLIAM PIRTLE,	Indianapolis, Ind.
HERRICK, JOHN J.,	Chicago, Ill.
HERRINGTON, CASS E.,	Denver, Col.
HERSEY, HENRY J.,	Denver, Col.
HIESTER, ISAAC,	Reading, Pa.
HIGGINBOTHAM, C. C.,	Buckhannon, W. Va.

HIGGINS, ANTHONY,	Wilmington, Del.
HIGGINS, FRANK M.,	Limerick, Me.
HIGGINS, WILLIAM E.,	Lawrence, Kan.
HILL, JOSEPH M.,	Fort Smith, Ark.
HILL, LYSANDER,	Chicago, Ill.
HILL, THOMAS N.,	Halifax, N. C.
HILL, WALTER B.,	Athens, Ga.
HILLES, WILLIAM S.,	Wilmington, Del.
HILLS, W. J.,	Juneau, Alaska.
HINCKLEY, L. E. C.,	Denver, Col.
HINE, LEMON G.,	Washington, D. C.
HINES, CLARK B.,	Bellville, Ohio.
HINKLEY, JOHN,	Baltimore, Md.
HISKY, THOMAS FOLEY,	Baltimore, Md.
HOADLY, GEORGE, JR.,	Cincinnati, Ohio.
HODGES, GEORGE L.,	Denver, Col.
HOGAN, JOHN W.,	Providence, R. I.
HOLDOM, JESSE,	Chicago, Ill.
HOLLISTER, THOMAS,	Cincinnati, Ohio.
HOLMAN, FREDERICK V.,	Portland, Ore.
HOLMES, DANIEL B.,	Kansas City, Mo.
HOLT, WILLIAM G.,	Kansas City, Kan.
HOOD, THOMAS H.,	Denver, Col.
HOPKINS, E. H.,	Cleveland, Ohio.
HOPKINS, JAMES L.,	St. Louis, Mo.
HORNBLOWER, WILLIAM B.,	New York, N. Y.
HOBNER, JOHN J.,	Helena, Ark.
HOTCHKISS, WILLIAM HORACE,	Buffalo, N. Y.
HOULTON, SAMUEL C.,	Baltimore, Md.
HOWARD, CHARLES MORRIS,	Baltimore, Md.
HOWARD, GEORGE H.,	Washington, D. C.
HOWE, ELMER P.,	Boston, Mass.
HOWE, WILLIAM WIRT,	New Orleans, La.
HOWLAND, PAUL,	Cleveland, Ohio.
HOWRY, CHARLES B. (Washington, D. C.),	Oxford, Miss.
HOWSON, CHARLES,	Philadelphia, Pa.
HOYT, HIRAM J.,	Muskegon, Mich.
HOYT, JAMES H.,	Cleveland, Ohio.
HOYT, LUCIUS W.,	Denver, Col.
HUBBARD, HARRY,	New York, N. Y.
HUBBARD, LEVERETT M.,	Wallingford, Conn.
HUBBARD, THOMAS H.,	New York, N. Y.
HUBBARD, WILLIAM P.,	Wheeling, W. Va.
HUFFCUT, E. W.,	Ithaca, N. Y.
HUGHES, CHARLES E.,	New York, N. Y.

HUGHES, CHARLES J., JR.,	Denver, Col.
HUGHES, D. H.,	Morganfield, Ky.
HUGHES, E. C.,	Seattle, Wash.
HUGHES, ROBERT M.,	Norfolk, Va.
HUGHES, THOMAS,	Baltimore, Md.
HULL, GEORGE S.,	Buffalo, N. Y.
HUNDLEY, OSCAR R.,	Huntsville, Ala.
HUNSAKER, WILLIAM J.,	Los Angeles, Cal.
HUNT, CARLETON,	New Orleans, La.
HUNT, CHARLES J.,	Cincinnati, Ohio.
HUNT, FREEMAN,	Boston, Mass.
HUNT, SAMUEL F.,	Cincinnati, Ohio.
HUNTER, CHARLES F.,	Milwaukee, Wis.
HUNTER, ERNEST HOWARD,	Philadelphia, Pa.
HUNTER, ROBERT,	Sioux City, Iowa.
HURD, HARVEY B.,	Chicago, Ill.
HURLBUTT, HENRY F.,	Boston, Mass.
HUTCHINS, HARRY B.,	Ann Arbor, Mich.
HUTCHINSON, BARTON B.,	Trenton, N. J.
HUTCHINSON, JOHN F.,	Parkersburg, W. Va.
HYDE, WESLEY W.,	Grand Rapids, Mich.
HYDE, WILLIAM W.,	Hartford, Conn.
INGALSBE, GRENVILLE M.,	Sandy Hill, N. Y.
INGERSOLL, HENRY H.,	Knoxville, Tenn.
INGLER, FRANCIS M.,	Indianapolis, Ind.
IRVINE, FRANK,	Ithaca, N. Y.
ISAACS, M. S.,	New York, N. Y.
JACKSON, CLIFFORD L.,	Muscogee, I. T.
JACKSON, ROBERT F.,	Nashville, Tenn.
JACKSON, WILLIAM H.,	Cincinnati, Ohio.
JACOB, EPHRAIM A.,	New York, N. Y.
JACOKES, JAMES A.,	Pontiac, Mich.
JAHN, CARL G.,	Columbus, Ohio.
JAMES, FRANCIS B.,	Cincinnati, Ohio.
JAMESON, OVID B.,	Indianapolis, Ind.
JANUARY, WILLIAM L.,	Detroit, Mich.
JAYNE, H. LABARRE,	Philadelphia, Pa.
JEFFRIS, MALCOLM G.,	Janesville, Wis.
JELKE, FERDINAND, JR.,	Cincinnati, Ohio.
JELLINEK, EDWARD L.,	Buffalo, N. Y.
JENCKES, THOMAS A.,	Providence, R. I.
JENKINS, JAMES G.,	Milwaukee, Wis.
JENNINGS, ANDREW J.,	Fall River, Mass.
JENNINGS, ROBERT W.,	Skagway, Alaska.
JEWETT, JOHN N.,	Chicago, Ill.

JOHNSON, BENJAMIN N.,	Boston, Mass.
JOHNSON, HOMER H.,	Cleveland, Ohio.
JOHNSON, SIMEON M.,	Cincinnati, Ohio.
JOHNSTON, THOMAS J.,	New York, N. Y.
JOLINE, ADRIAN H.,	New York, N. Y.
JONES, ASAHUEL W.,	Youngstown, Ohio.
JONES, BURR W.,	Madison, Wis.
JONES, JAMES M.,	Cleveland, Ohio.
JONES, J. LEVERING,	Philadelphia, Pa.
JONES, LEONARD A.,	Boston, Mass.
JONES, RANKIN D.,	Cincinnati, Ohio.
JONES, RICHMOND L.,	Reading, Pa.
JONES, W. MARTIN,	Rochester, N. Y.
JOSÉPH, EMIL,	Cleveland, Ohio.
JOSS, FREDERICK A.,	Indianapolis, Ind.
JUDSON, FREDERICK N.,	St. Louis, Mo.
JUNKIN, FRANCIS T. A.,	Chicago, Ill.
KARNES, J. V. C.,	Kansas City, Mo.
KAY, JAMES I.,	Pittsburg, Pa.
KAY, WILLIAM E.,	Brunswick, Ga.
KEASBEY, EDWARD Q.,	Newark, N. J.
KEATOR, JOHN F.,	Philadelphia, Pa.
KEENER, WILLIAM A.,	New York, N. Y.
KEENEY, WILLARD F.,	Grand Rapids, Mich.
KEHR, EDWARD C.,	St. Louis, Mo.
KEITH, IRA B.,	Lynn, Mass.
KELLEN, WILLIAM V.,	Boston, Mass.
KELLOGG, E. BARSTOW,	New York, N. Y.
KELLOGG, L. LAFLIN,	New York, N. Y.
KELLOGG, STEPHEN W.,	Waterbury, Conn.
KELLEY, WILLIAM H.,	Richmond, Ind.
KELLY, RONALD,	Detroit, Mich.
KEMP, WYNDHAM,	El Paso, Tex.
KENNA, EDWARD D.,	Chicago, Ill.
KENNEDY, CRAMMOND,	Washington, D. C.
KENNON, NEWELL K.,	St. Clairsville, Ohio.
KENT, CHARLES A.,	Detroit, Mich.
KENT, EDWARD,	Phoenix, Ariz.
KENYON, WILLIAM H.,	New York, N. Y.
KERN, JOHN W.,	Indianapolis, Ind.
KERNAN, THOMAS J.,	Baton Rouge, La.
KERR, WILLIAM A.,	Minneapolis, Minn.
KERWIN, J. C.,	Neenah, Wis.
KETCHAM, WILLIAM A.,	Indianapolis, Ind.
KIDDLE, ALFRED W.,	New York, N. Y.

KILLIAN, JAMES R.,	Denver, Col.
KILVERT, THOMAS,	New York, N. Y.
KING, GEORGE A.,	Washington, D. C.
KING, S. H.,	St. Louis, Mo.
KINGSLEY, WILLARD,	Grand Rapids, Mich.
KINKAID, M. P.,	O'Neill, Neb.
KINNE, EDWARD D.,	Ann Arbor, Mich.
KINNE, L. G.,	Des Moines, Iowa.
KINNEY, CLESSON S.,	Salt Lake City, Utah.
KIBLIN, J. PARKER,	New York, N. Y.
KLEIN, JACOB,	St. Louis, Mo.
KLINE, VIRGIL P.,	Cleveland, Ohio.
KLOCK, GEORGE S.,	Utica, N. Y.
KNAPP, HOWARD H.,	Bridgeport, Conn.
KNAPPEN, LOYAL E.,	Grand Rapids, Mich.
KNIGHT, JESSE,	Cheyenne, Wyo.
KNIGHT, W. J.,	Dubuque, Iowa.
KNOTT, A. LEO,	Baltimore, Md.
KNOWLTON, HOSEA M.,	Boston, Mass.
KNOX, CHARLES H.,	New York, N. Y.
KNOX, P. C.,	Pittsburg, Pa.
KOHN, AARON,	Louisville, Ky.
KRAUTHOFF, L. C.,	Chicago, Ill.
KRETSINGER, E. O.,	Beatrice, Neb.
KRETZINGER, GEORGE W.,	Chicago, Ill.
KRUTTSCHNITT, ERNEST B.,	New Orleans, La.
KULP, GEORGE B.,	Wilkesbarre, Pa.
LACEY, JOHN W.,	Cheyenne, Wyo.
LACKNER, FRANCIS,	Chicago, Ill.
LADD, BABSON S.,	Boston, Mass.
LADD, NATH. W.,	Boston, Mass.
LADD, SANFORD B.,	Kansas City, Mo.
LAMAR, JOSEPH R.,	Augusta, Ga.
LAMB, SAMUEL O.,	Greenfield, Mass.
LAMBERT, TALLMADGE A.,	Washington, D. C.
LAMBERT, WILTON J.,	Washington, D. C.
LAMBERTON, C. L.,	New York, N. Y.
LANCASTER, CHARLES C.,	Washington, D. C.
LANCASTER, WILLIAM A.,	Minneapolis, Minn.
LANE, V. H.,	Ann Arbor, Mich.
LANDIS, CHARLES J.,	Lancaster, Pa.
LANGDON, MARTIN,	Omaha, Neb.
LANNING, WILLIAM M.,	Trenton, N. J.
LARNER, JOHN B.,	Washington, D. C.
LATHROP, GARDINER,	Kansas City, Mo.

LAWRENCE, JAMES,	Cleveland, Ohio.
LAWSON, JOHN D.,	Columbia, Mo.
LAWSON, WILLIAM C.,	Chicago, Ill.
LAWTON, ALEXANDER R.,	Savannah, Ga.
LEA, OVERTON,	Nashville, Tenn.
LEAKEN, WILLIAM R.,	Savannah, Ga.
LEAKIN, J. WILSON,	Baltimore, Md.
LEAR, HENRY,	Doylestown, Pa.
LEAVITT, JOHN BROOKS,	New York, N. Y.
LECKIE, A. E. L.,	Washington, D. C.
LEE, BLAIR,	Washington, D. C.
LEE, BLEWETT,	Chicago, Ill.
LEE, HARRY H.,	Denver, Col.
LEGÈNDRE, JAMES,	New Orleans, La.
LEHMAN, FRED. W.,	St. Louis, Mo.
LENAHAN, JOHN T.,	Wilkesbarre, Pa.
LESH, U. S.,	Huntington, Ind.
LETTON, CHARLES B.,	Fairbury, Neb.
LEVINSON, S. O.,	Chicago, Ill.
LEVIS, HOWARD C.,	Schenectady, N. Y.
LEVY, JOSEPH L.,	New York, N. Y.
LEWENTHAL, A., JR.,	Cleveland, Ohio.
LEWIS, FRANCIS D.,	Philadelphia, Pa.
LEWIS, H. M.,	Madison, Wis.
LEWIS, LUNSFORD L.,	Richmond, Va.
LEWIS, W. DRAPER,	Philadelphia, Pa.
LIBBY, CHARLES F.,	Portland, Me.
LIDDON, BENJ. S.,	Marianna, Fla.
LIGHTNER, CLARENCE A.,	Detroit, Mich.
LILLIBRIDGE, WILLARD M.,	Detroit, Mich.
LINCOLN, SOLOMON,	Boston, Mass.
LINDSAY, WILLIAM,	New York, N. Y.
LINDSEY, BENJAMIN B.,	Denver, Col.
LINDSEY, EDWARD,	Warren, Pa.
LINDSLEY, HENRY A.,	Denver, Col.
LINDSLEY, PHILIP,	Dallas, Texas.
LIONBERGER, ISAAC H.,	St. Louis, Mo.
LITTLEFIELD, CHARLES E.,	Rockland, Me.
LITTLEFIELD, NATHAN W.,	Pawtucket, R. I.
LIVINGOOD, FRANK S.,	Reading, Pa.
LOCKWOOD, VIRGIL H.,	Indianapolis, Ind.
LOESCH, FRANK J.,	Chicago, Ill.
LOGAN, WALTER S.,	New York, N. Y.
LONDON, ALEXANDER T.,	Birmingham, Ala.
LONGUEVILLE, J. C.,	Dubuque, Iowa.

LORE, CHARLES B ,	Wilmington, Del.
LOWDEN, FRANK O.,	Chicago, Ill.
LOWNDES, LLOYD,	Cumberland, Md.
LUDWIG, JOHN C.,	Milwaukee, Wis.
LUNT, HORACE G.,	Colorado Springs, Col.
LYON, ADRIAN,	Perth Amboy, N. J.
MACFARLAND, W. W.,	New York, N. Y.
MACK, JULIAN W.,	Chicago, Ill.
MACKALL, THOMAS B.,	Baltimore, Md.
MACKALL, WILLIAM W.,	Savannah, Ga.
MACKOY, WILLIAM H. (Cincinnati, Ohio),	Covington, Ky.
MACPHERSON, ERNEST,	Louisville, Ky.
MACVEAGH, WAYNE,	Philadelphia, Pa.
MADDOX, SAMUEL,	Washington, D. C.
MADIGAN, JOHN B.,	Houlton, Me.
MAFFETT, JAMES T.,	Clarion, Pa.
MAHONEY, TIMOTHY J.,	Omaha, Neb.
MAJOR, SAMUEL C.,	Fayette, Mo.
MALONE, JAMES H.,	Memphis, Tenn.
MALONE, THOS. H.,	Nashville, Tenn.
MALTBIE, THEODORE M.,	Granby, Conn.
MANDERSON, CHARLES F.,	Omaha, Neb.
MANLY, GEORGE C.,	Denver, Col.
MANNING, WILLIAM J.,	Chicago, Ill.
MARBURY, WILLIAM L.,	Baltimore, Md.
MARR, ROBERT H., JR.,	New Orleans, La.
MARTIN, FRANCIS,	Falls City, Neb.
MARTIN, FRANK L.,	Hutchison, Kan.
MARTIN, HORACE H.,	Chicago, Ill.
MARTIN, J. WILLIS,	Philadelphia, Pa.
MARTIN, THOMAS B.,	Little Rock, Ark.
MARTINDALE, CHARLES,	Indianapolis, Ind.
MASON, ALFRED F.,	St. Paul, Minn.
MASSEY, LOUIS C.,	Orlando, Fla.
MATHER, ROBERT,	Chicago, Ill.
MATTHEWS, C. BENTLEY,	Cincinnati, Ohio.
MAURO, PHILIP,	Washington, D. C.
MAXWELL, LAWRENCE, JR.,	Cincinnati, Ohio.
MAY, HENRY F.,	Denver, Col.
MAYHEW, ALEXANDER E.,	Wallace, Idaho.
MECHEM, FLOYD R.,	Ann Arbor, Mich.
MEDDAUGH, ELIJAH W.,	Detroit, Mich.
MELDRIM, P. W.,	Savannah, Ga.
MELOY, WILLIAM A.,	Washington, D. C.
MERCER, GEORGE GLUYAS,	Philadelphia, Pa.

MERCER, HUGH V.,	Minneapolis, Minn.
MERCHANT, HENRY D.,	New York, N. Y.
MERCUR, RODNEY A.,	Towanda, Pa.
MERRICK, CHARLES D.,	Parkersburg, W. Va.
MERRICK, EDWIN T.,	New Orleans, La.
MERRICK, GEORGE PECK,	Chicago, Ill.
MERRILL, JOSEPH HANSELL,	Thomasville, Ga.
MERRIMAN, CHARLES A.,	Alamosa, Col.
MERVINE, NICHOLAS P.,	Altoona, Pa.
MESTREZAT, S. LESLIE,	Uniontown, Pa.
MEYERS, SIDNEY S.,	New York, N. Y.
MICHENER, L. T.,	Washington, D. C.
MILBURN, JOHN G.,	Buffalo, N. Y.
MILES, JOSHUA W.,	Princess Anne, Md.
MILLER, AUGUSTUS S.,	Providence, R. I.
MILLER, B. K.,	Milwaukee, Wis.
MILLER, CHARLES W.,	Goshen, Ind.
MILLER, E. SPENCER,	Philadelphia, Pa.
MILLER, FRANK H.,	Augusta, Ga.
MILLER, GEORGE P.,	Milwaukee, Wis.
MILLER, JOHN S.,	Chicago, Ill.
MILLER, N. DUBOIS,	Philadelphia, Pa.
MILLER, PEYTON F.,	Albany, N. Y.
MILLER, T. S.,	Dallas, Texas.
MILLER, WILLIAM J.,	Washington, D. C.
MILLER, WILLIAM K.,	Augusta, Ga.
MILLER, W. W.,	New York, N. Y.
MILLIKEN, JOHN D.,	McPherson, Kansas.
MILLS, J. WARNER,	Denver, Col.
MILNOR, M. CLEILAND,	New York, N. Y.
MINOR, RALEIGH C.,	Charlottesville, Va.
MITCHELL, CHARLES E.,	New York, N. Y.
MOFFIT, JOHN T.,	Tipton, Iowa.
MONROE, CHARLES,	Los Angeles, Cal.
MONTGOMERY, CARROLL S.,	Omaha, Neb.
MONTGOMERY, M. A.,	Oxford, Miss.
MONTGOMERY, OSCAR H.,	Seymour, Ind.
MOORE, F. A.,	Salem, Ore.
MOORE, JOHN BASSETT,	New York, N. Y.
MOORE, JOHN M.,	Little Rock, Ark.
MOORE, J. MCCABE,	Kansas City, Kan.
MOORE, JOSEPH B.,	Lansing, Mich.
MOORE, M. HERNDON,	Columbia, S. C.
MOORE, WILLIAM A.,	Detroit, Mich.
MOORES, CHARLES W.,	Indianapolis, Ind.

MOORES, MERRILL,	Indianapolis, Ind.
MOOT, ADELBERT,	Buffalo, N. Y.
MORAN, THOMAS A.,	Chicago, Ill.
MORDECAI, T. MOULTRIE,	Charleston, S. C.
MORGAN, CHARLES E., JR.,	Philadelphia, Pa.
MORGAN, RANDAL,	Philadelphia, Pa.
MORRIS, HOWARD,	Milwaukee, Wis.
MORRIS, JOHN, JR.,	Fort Wayne, Ind.
MORRIS, M. F.,	Washington, D. C.
MORRIS, NATHAN,	Indianapolis, Ind.
MORRIS, THOMAS J.,	Baltimore, Md.
MORRISON, ROBERT E.,	Prescott, Arizona.
MORSE, A. PORTER,	Washington, D. C.
MORSE, GODFREY,	Boston, Mass.
MORSE, ROBERT M.,	Boston, Mass.
MORSE, WALDO G.,	New York, N. Y.
MORTON, J. R.,	Lexington, Ky.
MOSES, ADOLPH,	Chicago, Ill.
MOSES, RAPHAEL J.,	New York, N. Y.
MUHLENBERG, HENRY A.,	Reading, Pa.
MULLIN, EUGENE,	Bradford City, Pa.
MULLIN, MICHAEL A.,	Baltimore, Md.
MUNFORD, BEVERLEY B.,	Richmond, Va.
MUNGER, W. H.,	Omaha, Neb.
MUNROE, WILLIAM A.,	Boston, Mass.
MUNSON, C. LARUE,	Williamsport, Pa.
MUSGRAVE, HARRISON,	Chicago, Ill.
MYERS, JAMES J.,	Boston, Mass.
MYERS, NATHANIEL,	New York, N. Y.
MYERS, QUINCY A.,	Logansport, Ind.
MCALLISTER, HENRY, JR.,	Colorado Springs, Col.
MCALPIN, HENRY,	Savannah, Ga.
MCCALL, EDWARD E.,	New York, N. Y.
MCCAMMON, JOSEPH K.,	Washington, D. C.
MCCANDLESS, A. D.,	Wymore, Neb.
MCCARTER, ROBERT H.,	Newark, N. J.
MCCARTER, THOMAS N.,	Newark, N. J.
MCCARTHY, J. J.,	Dubuque, Iowa.
MCCARTHY, T. F.,	Denver, Col.
MCCLAIN, EMLIN,	Iowa City, Iowa.
MCCLELLAN, THOMAS N.,	Montgomery, Ala.
MCCLINTOCK, ANDREW H.,	Wilkesbarre, Pa.
MCCLOSKEY, BERNARD,	New Orleans, La.
MCCLUNG, WM. H.,	Pittsburg, Pa.
MCCLURE, HARROLD M.,	Lewisburg, Pa.

McCOMAS, LOUIS E.,	Williamsport, Md.
McCONLOGUE, JAMES H.,	Mason City, Iowa.
McCOOK, JOHN J.,	New York, N. Y.
McCORDIC, ALFRED E.,	Chicago, Ill.
McCRARY, A. J.,	Binghamton, N. Y.
McCREERY, JAMES W.,	Greeley, Col.
McCULLOUGH, JOHN G.,	No. Bennington, Vt.
McDERMOTT, EDWARD J.,	Louisville, Ky.
MCDONALD, J. WADE,	San Diego, Cal.
MCDONOUGH, JAMES B.,	Fort Smith, Ark.
McELROY, JOHN H.,	Chicago, Ill.
McEVoy, JOHN W.,	Lowell, Mass.
MCGARRY, THOMAS F.,	Grand Rapids, Mich.
MCGILL, J. NOTA,	Washington, D. C.
McHUGH, WILLIAM D.,	Omaha, Neb.
McINTOSH, JAMES H.,	Omaha, Neb.
McINTOSH, J. R.,	Atlanta, Ga.
McKEIGHAN, JOHN E.,	St. Louis, Mo.
McKENNEY, FREDERIC D.,	Washington, D. C.
McKINNEY, WILLIAM M.,	Northport, N. Y.
McKNIGHT, RICHARD,	Denver, Col.
McLEAN, DONALD,	New York, N. Y.
McLEAN, LESTER,	Denver, Col.
McLEOD, W. D.,	Kansas City, Mo.
McMAHON, J. SPRIGG,	Dayton, Ohio.
McNULTY, WILLIAM D. (New York, N. Y.), . .	Saratoga Springs, N. Y.
McWHORTER, HAMILTON,	Lexington, Ga.
NAGEL, CHARLES,	St. Louis, Mo.
NEEDHAM, CHARLES W.,	Washington, D. C.
NEW, ALEXANDER,	Kansas City, Mo.
NEWBERGER, LOUIS,	Indianapolis, Ind.
NEWTON, HENRY G.,	New Haven, Conn.
NICHOLS, GEORGE L.,	New York, N. Y.
NICHOLS, H. S. P.,	Philadelphia, Pa.
NICHOLSON, JOHN R.,	Dover, Del.
NICOLSON, JOHN, JR.,	New York, N. Y.
NIELDS, BENJAMIN,	Wilmington, Del.
NIELDS, JOHN P.,	Wilmington, Del.
NILES, HENRY C.,	York, Pa.
NOBLE, DANIEL,	Long Island City, N. Y.
NOBLE, JOHN W.,	St. Louis, Mo.
NOEL, JAMES W.,	Indianapolis, Ind.
NORRIS, MARK,	Grand Rapids, Mich.
NORRIS, MYRON A.,	Youngstown, Ohio.
NORTH, E. D.,	Lancaster, Pa.

NORTH, HUGH M.,	Columbia, Pa.
OAKES, EDWARD L.,	Telluride, Col.
O'BRIEN, THOMAS J.,	Grand Rapids, Mich.
O'DONNELL, THOMAS J.,	Denver, Col.
OFFIELD, CHARLES K.,	Chicago, Ill.
OGDEN, CHARLES,	Omaha, Neb.
OGDEN, HOWARD N.,	Chicago, Ill.
OGDEN, LEWIS M.,	Milwaukee, Wis.
OLNEY, RICHARD,	Boston, Mass.
OLNEY, WARREN,	San Francisco, Cal.
O'NEILL, HARRY E.,	Omaha, Neb.
OPDYKE, WILLIAM S.,	New York, N. Y.
ORDRONAUX, JOHN,	New York, N. Y.
ORTON, PHILO A.,	Darlington, Wis.
OSGOOD, HOWARD L.,	Rochester, N. Y.
OSTRANDER, RUSSELL C.,	Lansing, Mich.
OTIS, EPHRAIM A.,	Chicago, Ill.
OTIS, GEORGE E.,	San Bernardino, Cal.
OTTOFY, L. FRANK,	St. Louis, Mo.
OWENS, GEORGE W.,	Savannah, Ga.
PADDOCK, GEORGE L.,	Chicago, Ill.
PAGE, GEORGE T.,	Peoria, Ill.
PAGE, HENRY,	Princess Anne, Md.
PAGE, ROSEWELL,	Richmond, Va.
PAGE, THOMAS NELSON,	Washington, D. C.
PAIGE, JAMES,	Minneapolis, Minn.
PALMER, CLARENCE S.,	Kansas City, Mo.
PALMER, HENRY W.,	Wilkesbarre, Pa.
PALMER, TRUMAN F.,	Monticello, Ind.
PARKER, ALTON B.,	Kingston, N. Y.
PARKER, CORTLANDT,	Newark, N. J.
PARKER, EDMUND M.,	Boston, Mass.
PARKER, FREDERICK,	Freehold, N. J.
PARKER, JOHN W.,	Taylor, Texas.
PARKER, ROBERT S.,	Toledo, Ohio.
PARKER, R. WAYNE,	Newark, N. J.
PARKHURST, JOHN G.,	Coldwater, Mich.
PARKINSON, ROBERT H.,	Chicago, Ill.
PARMENTER, ROSWELL A.,	Troy, N. Y.
PARSONS, CHARLES C.,	Denver, Col.
PARSONS, HIN ^d DILL,	Schenectady, N. Y.
PARSONS, JAMES M.,	Rock Rapids, Iowa.
PATRICK, WILLIAM R.,	Papillion, Neb.
PATTERSON, GEORGE S.,	Philadelphia, Pa.
PATTERSON, JOHN C.,	Marshall, Mich.

PATTERSON, JOHN H.,	Pontiac, Mich.
PATTERSON, LINDSAY,	Winston, N. C.
PATTERSON, M. R.,	Columbus, Ohio.
PATTERSON, ROSWELL H.,	Scranton, Pa.
PATTERSON, T. ELLIOTT,	Philadelphia, Pa.
PATTERSON, THOMAS,	Pittsburg, Pa.
PATTESON, S. S. P.,	Richmond, Va.
PATTON, JOHN,	Grand Rapids, Mich.
PAUL, A. C.,	Minneapolis, Minn.
PAYNE, JAMES G.,	Washington, D. C.
PAYSON, EDWARD P.,	Boston, Mass.
PEALE, S. R.,	Lock Haven, Pa.
PECK, GEORGE R.,	Chicago, Ill.
PENFIELD, W. L. (State Dep't, Washington, D.C.),	Auburn, Ind.
PENNYPACKER, CHARLES H.,	West Chester, Pa.
PENNYPACKER, SAMUEL W.,	Philadelphia, Pa.
PEPPER, GEORGE WHARTON,	Philadelphia, Pa.
PERELES, JAMES M.,	Milwaukee, Wis.
PERELES, THOMAS JEFFERSON,	Milwaukee, Wis.
PERKINS, SAMUEL C.,	Philadelphia, Pa.
PERKINS, WILLIAM H., JR.,	Baltimore, Md.
PERRY, R. ROSS, JR.,	Washington, D. C.
PERRY, WILLIAM C.,	Kansas City, Mo.
PETERS, JOHN A.,	Bangor, Me.
PETTIT, HORACE,	Philadelphia, Pa.
PETTY, ROBERT D.,	New York, N. Y.
PHELPS, CHARLES,	Rockville, Conn.
PHELPS, CHARLES E.,	Baltimore, Md.
PHILIPS, JOHN F.,	Kansas City, Mo.
PHILLIPS, NELSON,	Hillsboro, Tex.
PICKENS, SAMUEL O.,	Indianapolis, Ind.
PICKENS, WILLIAM A.,	Indianapolis, Ind.
PICKRELL, JOHN,	Richmond, Va.
PIERCE, EDWARD P.,	Fitchburg, Mass.
PIERCE, WINSLOW S.,	New York, N. Y.
PILCHER, JAMES S.,	Nashville, Tenn.
PINGREY, D. H.,	Bloomington, Ill.
PIRTLE, JAMES S.,	Louisville, Ky.
POE, JOHN PRENTISS,	Baltimore, Md.
POND, ASHLEY,	Detroit, Mich.
POTTER, CHARLES N.,	Cheyenne, Wyo.
POTTER, DEXTER B.,	Providence, R. I.
POTTER, FREDERICK,	New York, N. Y.
POUND, ROSCOE,	Lincoln, Neb.
POWERS, FREDERICK A.,	Houlton, Me.

PRATT, WALLACE,	Kansas City, Mo.
PRENTIS, ROBERT R.,	Suffolk, Va.
PRICE, GEORGE E.,	Charleston, W. Va.
PRICE, J. G.,	Skagway, Alaska.
PRICHARD, FRANK P.,	Philadelphia, Pa.
PRIME, RALPH E.,	Yonkers, N. Y.
PRINDLE, EDWIN J.,	Washington, D. C.
PROCTOR, THOMAS W.,	Boston, Mass.
PROUT, F. N.,	Lincoln, Neb.
PRUDEN, WILLIAM D.,	Edenton, N. C.
PRUSSING, EUGENE E.,	Chicago, Ill.
PURNELL, CLAYTON,	Frostburg, Md.
PUTNAM, HARRINGTON,	New York, N. Y.
PUTNAM, WILLIAM L.,	Boston, Mass.
QUACKENBUSH, JAMES L.,	Buffalo, N. Y.
QUAIL, FRANK A.,	Cleveland, Ohio.
QUARLES, CHARLES,	Milwaukee, Wis.
QUARLES, JOSEPH V.,	Milwaukee, Wis.
QUARTON, WILLIAM B.,	Algona, Iowa.
RADFORD, GEORGE W.,	Detroit, Mich.
RALLS, JOSEPH G.,	Atoka, Ind. Ty.
RALSTON, JACKSON H.,	Washington, D. C.
RAMAGE, B. J.,	Sewanee, Tenn.
RANNEY, FLETCHER,	Boston, Mass.
RANNEY, HENRY C.,	Cleveland, Ohio.
RAWLE, FRANCIS,	Philadelphia, Pa.
RAY, CHARLES T.,	Louisville, Ky.
RAYMOND, JAMES H.,	Chicago, Ill.
RAYNOLDS, EDWARD V.,	New Haven, Conn.
READ, JAMES F.,	Fort Smith, Ark.
REARDON, JOHN J.,	Williamsport, Pa.
REAVIS, C. F.,	Falls City, Neb.
RECTOR, EDWARD,	Chicago, Ill.
REDDING, JOSEPH D.,	New York, N. Y.
REDDING, WILLIAM A.,	New York, N. Y.
REDFIELD, HENRY S.,	New York, N. Y.
REED, FRANK F.,	Chicago, Ill.
REED, H. T.,	Cresco, Iowa.
REESE, MANOAH B.,	Lincoln, Neb.
REEVES, ALFRED G.,	New York, N. Y.
REGENNITTER, ERWIN L.,	Idaho Springs, Col.
REINHARD, GEORGE L.,	Bloomington, Ind.
REYNOLDS, THOMAS H.,	Kansas City, Mo.
RICE, WILLIAM E.,	Warren, Pa.
RICH, BURDETTE A.,	Rochester, N. Y.

RICHARDS, HARRY S.,	Iowa City, Iowa.
RICHARDSON, GEORGE F.,	Lowell, Mass.
RICHARDSON, W. K.,	Boston, Mass.
RICHBERG, JOHN C.,	Chicago, Ill.
RICHMOND, BENJAMIN, A.,	Cumberland, Md.
RIDDELL, HARVEY,	Denver, Col.
RIKER, ADRIAN,	Newark, N. J.
RINAKER, JOHN I.,	Carlinville, Ill.
RINEHART, C. D.,	Jacksonville, Fla.
RINER, JOHN A.,	Cheyenne, Wyo.
RITSHER, EDWARD C.,	Chicago, Ill.
ROBB, BAMFORD A.,	Boise, Idaho.
ROBBINS, C. A.,	Lincoln, Neb.
ROBBINS, EDWARD D.,	Hartford, Conn.
ROBBINS, HENRY S.,	Chicago, Ill.
ROBERTS, GEORGE L.,	Boston, Mass.
ROBERTS, W. J.,	Keokuk, Iowa.
ROBERTSON, C. D.,	Cincinnati, Ohio.
ROBERTSON, GEORGE,	Mexico, Mo.
ROBERTSON, WILLIAM GORDON,	Roanoke, Va.
ROBINSON, RALPH,	Baltimore, Md.
ROBINSON, THOMAS H.,	Bel Air, Md.
ROBINSON, WALTOUR M.,	Jefferson City, Mo.
ROBSON, FRANK E.,	Detroit, Mich.
ROGERS, EDWARD H.,	New Haven, Conn.
ROGERS, ELMER E.,	Chicago, Ill.
ROGERS, GEORGE MILLS,	Chicago, Ill.
ROGERS, HENRY T.,	Denver, Col.
ROGERS, HENRY WADE,	New Haven, Conn.
ROGERS, PLATT,	Denver, Col.
ROGERS, ROBERT LYON,	Baltimore, Md.
ROGERS, WILLIAM P.,	Bloomington, Ind.
ROOT, ELIHU,	New York, N. Y.
ROSE, GEORGE B.,	Little Rock, Ark.
ROSE, JAMES E.,	Auburn, Ind.
ROSE, JAMES H.,	Auburn, Ind.
ROSE, U. M.,	Little Rock, Ark.
ROSE, WALTER T. J.,	Los Angeles, Cal.
ROSEBROUGH, W. S.,	Memphis, Tenn.
ROSENTHAL, JULIUS,	Chicago, Ill.
ROST, EMILE,	New Orleans, La.
RUBENS, HARRY,	Chicago, Ill.
RUNNELLS, JOHN S.,	Chicago, Ill.
RUSSELL, ALFRED,	Detroit, Mich.
RUSSELL, CHARLES THEODORE,	Cambridge, Mass.

RUSSELL, EDWARD L.,	Mobile, Ala.
RUSSELL, HENRY,	Detroit, Mich.
RUSSELL, ISAAC F.,	New York, N. Y.
RUSSELL, TALCOTT H.,	New Haven, Conn.
RYON, WILLIAM W.,	Shamokin, Pa.
SALTZGABER, GAYLARD M.,	Van Wert, Ohio.
SAMS, CONWAY W.,	Baltimore, Md.
SAMUELS, SIDNEY L.,	Fort Worth, Texas.
SANBORN, JOHN B.,	St. Paul, Minn.
SANDERS, GEORGE A.,	Springfield, Ill.
SANDERS, JAMES U.,	Helena, Mont.
SANDERS, W. B.,	Cleveland, Ohio.
SANDERS, WILBUR F.,	Helena, Mont.
SANFORD, EDWARD T.,	Knoxville, Tenn.
SANFORD, ELISHA M.,	Prescott, Arizona.
SAULSBURY, WILLARD,	Wilmington, Del.
SAWYER, ALFRED P.,	Lowell, Mass.
SAWYER, HAZEN I.,	Keokuk, Iowa.
SAYLER, JOHN RYNER,	Cincinnati, Ohio.
SAYLER, SAMUEL M.,	Huntington, Ind.
SCAIFE, LAURISTON L.,	Boston, Mass.
SCALLON, WILLIAM,	Butte, Mont.
SCHMUCKER, SAMUEL D.,	Baltimore, Md.
SCHNABEL, CHARLES J.,	Portland, Ore.
SCHOFIELD, WILLIAM,	Boston, Mass.
SCHOULER, JAMES,	Boston, Mass.
SCOTT, FRANK H.,	Chicago, Ill.
SCOTT, HOWARD B.,	Danbury, Conn.
SCOTT, JAMES B.,	Champaign, Ill.
SCOTT, JAMES L.,	Saratoga Springs, N. Y.
SEABROOK, PAUL E.,	Pineora, Ga.
SEAMAN, WILLIAM H.,	Sheboygan, Wis.
SEARLES, CHARLES E.,	Putnam, Conn.
SEATON, EMMETT,	Richmond, Va.
SEBREE, FRANK P.,	Kansas City, Mo.
SEBREE, GEORGE M.,	Springfield, Mo.
SEEVERS, GEORGE W.,	Oskaloosa, Iowa.
SEIBERT, WILLIAM N.,	New Bloomfield, Pa.
SELDEN, JOHN,	Washington, D. C.
SELLERS, EMORY B.,	Monticello, Ind.
SENEY, HENRY W.,	Toledo, Ohio.
SEYMOUR, HENRY A.,	Washington, D. C.
SEYMOUR, HENRY H.,	Buffalo, N. Y.
SEXTON, PLINY T.,	Palmyra, N. J.
SHACK, FERDINAND,	New York, N. Y.

SHAFROTH, JOHN F.,	Denver, Col.
SHAPLEY, RUFUS E.,	Philadelphia, Pa.
SHARP, GEORGE M.,	Baltimore, Md.
SHEEAN, JAMES B.,	Omaha, Neb.
SHEPARD, CHARLES E.,	Seattle, Wash.
SHEPARD, HARVEY N.,	Boston, Mass.
SHEPARD, RICHARD B.,	Salt Lake City, Utah.
SHEPARD, SETH,	Washington, D. C.
SHERIFF, ANDREW R.,	Chicago, Ill.
SHERLEY, SWAGAR,	Louisville, Ky.
SHERMAN, E. B.,	Chicago, Ill.
SHERWIN, JOHN C.,	Mason City, Iowa.
SHERWOOD, ADIEL,	St. Louis, Mo.
SHIELDS, J. M.,	Pittsburg, Pa.
SHIPMAN, GEORGE M.,	Belvidere, N. J.
SHIRAS, GEORGE, JR.,	Pittsburg, Pa.
SHIRAS, OLIVER P.,	Dubuque, Iowa.
SIEBECKER, ROBERT G.,	Madison, Wis.
SIMPSON, ALEXANDER, JR.,	Philadelphia, Pa.
SKELTON, WILLIAM B.,	Lewiston, Me.
SLOAN, D. LINDLEY,	Cumberland, Md.
SLOMAN, ADOLPH,	Detroit, Mich.
SMEAD, A. D. B.,	Carlisle, Pa.
SMITH, ALEXANDER L.,	Toledo, Ohio
SMITH, ALFRED PERCIVAL,	Philadelphia, Pa.
SMITH, ALONZO GREENE,	Indianapolis, Ind.
SMITH, BURTON,	Atlanta, Ga.
SMITH, CHARLES B.,	Topeka, Kansas.
SMITH, CHARLES W.,	Indianapolis, Ind.
SMITH, D. F.,	Kalispell, Mont.
SMITH, EDWIN BURRITT,	Chicago, Ill.
SMITH, EDWIN HARVIE,	Denver, Col.
SMITH, HARVEY F.,	Clarksburg, W. Va.
SMITH, HENRY HYDE,	Boston, Mass.
SMITH, HOWARD B.,	Omaha, Neb.
SMITH, HOWARD L.,	Madison, Wis.
SMITH, JEREMIAH,	Cambridge, Mass.
SMITH, JOHN R.,	Denver, Col.
SMITH, LUTHER R.,	Washington, D. C.
SMITH, NELSON,	New York, N. Y.
SMITH, ROBERT WAVERLEY,	Galveston, Texas.
SMITH, RUFUS B.,	Cincinnati, Ohio.
SMITH, SAM. FERRY,	San Diego, Cal.
SMITH, WALTER GEORGE,	Philadelphia, Pa.
SMITH, WILLIAM ALDEN,	Grand Rapids, Mich.

SMITH, WILLIAM B.,	Little Rock, Ark.
SMITH, WILLIS B.,	Richmond, Va.
SMYTH, CONSTANTINE J.,	Omaha, Neb.
SMYTHE, AUGUSTINE T.,	Charleston, S. C.
SNARE, JACOB,	Philadelphia, Pa.
SNOW, ALPHEUS H.,	Washington, D. C.
SNOW, DAVID W.,	Portland, Me.
SOMERVILLE, THOMAS H.,	University, Miss.
SPALDING, BURLEIGH FOLSOM,	Fargo, N. D.
SPEIR, GILBERT M.,	New York, N. Y.
SPENCER, CHARLES C.,	Monticello, Ind.
SPENCER, SELDEN P.,	St. Louis, Mo.
SPOONER, CHARLES P.,	Milwaukee, Wis.
SPOONER, JOHN C.,	Madison, Wis.
SPOONTS, M. A.,	Fort Worth, Texas.
SPRING, ARTHUR L.,	Boston, Mass.
SQUIRE, ANDREW,	Cleveland, Ohio.
STAAKE, WILLIAM H.,	Philadelphia, Pa.
STAFFORD, W. H.,	Chippewa Falls, Wis.
STANTON, LEWIS E.,	Hartford, Conn.
STARK, JOSHUA,	Milwaukee, Wis.
STARKWEATHER, JAMES C.,	Denver, Col.
STARR, MERRITT,	Chicago, Ill.
STEARNS, CHARLES F.,	Providence, R. I.
STEELE, HENRY J.,	Easton, Pa.
STEELE, ROBERT W.,	Denver, Col.
STERBETT, JAMES R.,	Pittsburg, Pa.
STETSON, FRANCIS LYNDE,	New York, N. Y.
STEUART, ARTHUR,	Baltimore, Md.
STEVENS, BREEZE J.,	Madison, Wis.
STEVENS, FREDERICK W.,	Detroit, Mich.
STEVENS, HIRAM F.,	St. Paul, Minn.
STEVENSON, ARCHIE M.,	Denver, Col.
STEVENSON, ELMER E.,	Indianapolis, Ind.
STEVICK, GUY LE ROY,	Denver, Col.
STEWART, GILBERT H.,	Columbus, Ohio.
STEWART, W. F. BAY,	York, Pa.
STILLMAN, HERMAN W.,	Chicago, Ill.
STILLMAN, THOMAS E.,	New York, N. Y.
STILLMAN, WALTER S.,	Council Bluffs, Iowa.
STILLWELL, JAMES C.,	Philadelphia, Pa.
STIMSON, EDWARD C.,	Colorado Springs, Col.
STIMSON, FREDERIC J.,	Boston, Mass.
STINESS, JOHN H.,	Providence, R. I.
STOCKBRIDGE, HENRY,	Baltimore, Md.

STODDARD, WILLIAM B ,	New Haven, Conn.
STOEHR, OSCAR,	Cincinnati, Ohio.
STOEVER, WILLIAM C.,	Philadelphia, Pa.
STONE, FREDERICK M.,	Boston, Mass.
STONE, HENRY L.,	Louisville, Ky.
STONE, J. W.,	Marquette, Mich.
STOREY, MOORFIELD,	Boston, Mass.
STORROW, JAMES J., JR.,	Boston, Mass.
STOUGHTON, A. B.,	Philadelphia, Pa.
STRATTON, CHARLES E.,	Boston, Mass.
STRAWBRIDGE, WILLIAM C.,	Philadelphia, Pa.
STREETER, FRANK S.,	Concord, N. H.
STRONG, ALAN H.,	New Brunswick, N. J.
STRONG, EDWARD W.,	Cincinnati, Ohio.
STROUT, SEWALL C.,	Portland, Me.
STUART, WILLIAM V.,	LaFayette, Ind.
STURTEVANT, CHARLES L.,	Washington, D. C.
SULZBERGER, MAYER,	Philadelphia, Pa.
SUMERWELL, E. K.,	New York, N. Y.
SUMNER, EDWARD A.,	New York, N. Y.
SWAIN, CHARLES M.,	Philadelphia, Pa.
SWAN, CHARLES H.,	Boston, Mass.
SWAN, ELBERT M.,	Rockport, Ind.
SWAN, WILLIAM W.,	Boston, Mass.
SWANEY, W. B.,	Chattanooga, Tenn.
SWASEY, GEORGE R.,	Boston, Mass.
SWAYNE, FRANCIS B (New York, N. Y.),	Toledo, Ohio.
SWAYZE, FRANCIS J.,	Newark, N. J.
SWETTING, ERNEST V.,	Algona, Iowa.
SWIFT, CHARLES M.,	Detroit, Mich.
SWISHER, A. E.,	Iowa City, Iowa.
SYMONDS, JOSEPH W.,	Portland, Me.
SYNNESTVEDT, PAUL,	Pittsburg, Pa.
TAFT, ELIHU B.,	Burlington, Vt.
TAFT, WILLIAM H.,	Cincinnati, Ohio.
TAGGART, EDWARD,	Grand Rapids, Mich.
TAGGART, RUSH,	New York, N. Y.
TALBOT, RALPH,	Denver, Col.
TALCOTT, WILLIAM E.,	Cleveland, Ohio.
TATUM, LOUIS R.,	Denver, Col.
TAUSSIG, JAMES,	St. Louis, Mo.
TAYLOR, JOHN D.,	New York, N. Y.
TAYLOR, JOSEPH T.,	Philadelphia, Pa.
TAYLOR, R. S.,	Fort Wayne, Ind.
TAYLOR, WILLIAM L.,	Indianapolis, Ind.

TEARS, DANIEL W.,	Denver, Col.
TELLER, WILLARD,	Denver, Col.
TENNANT, W. B.,	Richmond, Va.
TENNEY, DANIEL K.,	Madison, Wis.
TENNEY, HORACE KENT,	Chicago, Ill.
TERRELL, WILLIAM J.,	Burlington, N. J.
TERRY, J. W.,	Galveston, Texas.
THAYER, AMOS M.,	St. Louis, Mo.
THAYER, RUFUS C.,	Colorado Springs, Col.
THOM, ALFRED P.,	Norfolk, Va.
THOMAN, LEROY D.,	Chicago, Ill.
THOMAS, CHARLES S.,	Denver, Col.
THOMAS, W. H.,	Leeds, Md.
THOMAS, WILLIAM S.,	Baltimore, Md.
THOMASON, E. B.,	Richmond, Va.
THOMPSON, A. E.,	Oshkosh, Wis.
THOMPSON, JOSEPH,	Atlantic City, N. J.
THOMPSON, R. H.,	Jackson, Miss.
THOMPSON, SEYMOUR D.,	New York, N. Y.
THOMPSON, WILLIAM B.,	St. Louis, Mo.
THOMSON, CHARLES I.,	Denver, Col.
THORNTON, CHARLES S.,	Chicago, Ill.
THUM, WILLIAM WARWICK,	Louisville, Ky.
THURSTON, JOHN M.,	Omaha, Neb.
THURSTON, WILMARTH H.,	Providence, R. I.
TICHENOR, CHARLES O.,	Kansas City, Mo.
TIGHE, AMBROSE,	St. Paul, Minn.
TILLINGHAST, JAMES,	Providence, R. I.
TILLMAN, A. M.,	Nashville, Tenn.
TITUS, FRANK,	Kansas City, Mo.
TITUS, H. L.,	San Diego, Cal.
TODD, M. HAMPTON,	Philadelphia, Pa.
TOLLES, SHIRLEY H.,	Cleveland, Ohio.
TOMPKINS, HAMILTON B.,	New York, N. Y.
TOMPKINS, HENRY B.,	Atlanta, Ga.
TONEY, STERLING B.,	Louisville, Ky.
TORRANCE, DAVID,	Derby, Conn.
TOWLE, HENRY S.,	Chicago, Ill.
TOWNES, WILLIAM A.,	Richmond, Va.
TOWNSEND, CHARLES C.,	Philadelphia, Pa.
TOWNSEND, WILLIAM K.,	New Haven, Conn.
TRABUE, E. F.,	Louisville, Ky.
TREMAIN, HENRY E.,	New York, N. Y.
TRICKETT, WILLIAM,	Carlisle, Pa.
TRIMBLE, J. MCD.,	Kansas City, Mo.

TRIPP, BARTLETT,	Yankton, S. D.
TRIPPET, OSCAR A.,	Los Angeles, Cal.
TROUP, JAMES O.,	Bowling Green, Ohio.
TROWBRIDGE, HENRY,	Cripple Creek, Col.
TUCKER, GEORGE F.,	Boston, Mass.
TUCKER, HENRY ST. GEORGE,	Lexington, Va.
TURNER, HERBERT B.,	New York, N. Y.
TURNER, JESSE,	Van Buren, Ark.
TURNER, SMITH D.,	Parkersburg, W. Va.
TURNER, W. J.,	Milwaukee, Wis.
TUTTLE, J. BIRNEY,	New Haven, Conn.
TYLER, CHARLES H.,	Boston, Mass.
ULLMAN, FREDERIC,	Chicago, Ill.
VAILE, JOEL F.,	Denver, Col.
VANAMEE, WILLIAM,	Newburgh, N. Y.
VAN CISE, EDWIN,	Denver, Col.
VAN DEVANTER, WILLIS (Washington, D. C.),	Cheyenne, Wyo.
VAN DEVENTER, HORACE,	Knoxville, Tenn.
VAN DYKE, GEORGE D.,	Milwaukee, Wis.
VAN DYKE, WILLIAM D.,	Milwaukee, Wis.
VAN ORSDER, JOSIAH A.,	Cheyenne, Wyo.
VAN SLYCK, GEORGE F.,	New York, N. Y.
VAN SLYCK, GEORGE W.,	New York, N. Y.
VAN VECHTEN, A. V. W.,	New York, N. Y.
VAN WINKLE, W. W.,	Parkersburg, W. Va.
VARIAN, CHARLES S.,	Salt Lake City, Utah.
VATES, WILLIAM B.,	Pueblo, Col.
VENABLE, RICHARD M.,	Baltimore, Md.
VERTREES, J. J.,	Nashville, Tenn.
VIEU, HENRY A.,	New York, N. Y.
VILAS, EDWARD P.,	Milwaukee, Wis.
VILLARD, HAROLD G.,	New York, N. Y.
VINTON, HENRY H.,	La Fayette, Ind.
VON MOSCHISKER, ROBERT,	Philadelphia, Pa.
VOORHEES, JOHN H.,	Sioux Falls, S. D.
VROMAN, CHARLES E.,	Chicago, Ill.
VROOM, GARRET D. W.,	Trenton, N. J.
WADE, M. J.,	Iowa City, Iowa.
WADHAMS, FREDERICK E.,	Albany, N. Y.
WADLEY, WILLIAM H.,	Denver, Col.
WAGGENER, BALIE P.,	Atchison, Kan.
WAKELEY, ARTHUR C.,	Omaha, Neb.
WAKELEY, ELEAZER,	Omaha, Neb.
WALKER, ALBERT H.,	New York, N. Y.
WALKER, P. D.,	Charlotte, N. C.

WALKER, ROBERT J. C.,	Philadelphia, Pa.
WALL, GEORGE W.,	Du Quoin, Ill.
WALL, THOMAS B.,	Wichita, Kan.
WALLING, STUART D.,	Denver, Col.
WALSH, R. JAY,	Greenwich, Conn.
WALSH, WILLIAM E.,	Cumberland, Md.
WALTER, M. R.,	Baltimore, Md.
WALTHALL, A. M.,	El Paso, Texas.
WALTON, HENRY F.,	Philadelphia, Pa.
WAMBAUGH, EUGENE,	Cambridge, Mass.
WANTY, GEORGE P.,	Grand Rapids, Mich.
WARD, HAMILTON,	Buffalo, N. Y.
WARD, HENRY GALBRAITH,	New York, N. Y.
WARD, HERBERT H.,	Wilmington, Del.
WARD, HUGH C.,	Kansas City, Mo.
WARD, THOMAS, JR.,	Denver, Col.
WARD, WILBERT,	South Bend, Ind.
WARFIELD, EDWIN,	Baltimore, Md.
WARNER, DONALD T.,	Salisbury, Conn.
WARNER, GEORGE COFFING,	New York, N. Y.
WARNER, JOHN DEWITT,	New York, N. Y.
WARNER, JOSEPH B.,	Boston, Mass.
WARREN, SAMUEL D.,	Boston, Mass.
WARRINGTON, JOHN W.,	Cincinnati, Ohio.
WARVELLE, GEORGE W.,	Chicago, Ill.
WASHBURN, WILLIAM D.,	Chicago, Ill.
WATERMAN, CHARLES W.,	Denver, Col.
WATERS, J. S. T.,	Baltimore, Md.
WATROUS, GEORGE D.,	New Haven, Conn.
WATSON, D. T.,	Pittsburg, Pa.
WATTERSON, A. V. D.,	Pittsburg, Pa.
WATTS, LEGH R.,	Portsmouth, Va.
WATTS, WILLIAM W.,	Louisville, Ky.
WAY, WILLIAM A.,	Pittsburg, Pa.
WAYLAND, FRANCIS,	New Haven, Conn.
WEADOCK, THOMAS A. E.,	Detroit, Mich.
WEAVER, CLEMENT E.,	Adrian, Mich.
WEAVER, JOHN,	Philadelphia, Pa.
WEBB, JAMES H.,	New Haven, Conn.
WEBBER, MARSHALL B.,	Winona, Minn.
WEBSTER, W. H.,	Oconto, Wis.
WEEKS, WILLIAM R.,	New York, N. Y.
WEIL, A. LEO,	Pittsburg, Pa.
WELLMAN, ARTHUR H.,	Boston, Mass.
WELLS, ROLLIN J.,	Sioux Falls, S. D.

WEST, JOEL W.,	Omaha, Neb.
WEST, ROBERT G.,	Austin, Texas.
WEST, ROY O.,	Chicago, Ill.
WESTON-SMITH, R. D.,	Boston, Mass.
WETHEBEE, WILLIAM H.,	Detroit, Mich.
WETMORE, EDMUND,	New York, N. Y.
WHEELER, ARTHUR DANA,	Chicago, Ill.
WHEELER, EVERETT P.,	New York, N. Y.
WHEELER, SETH S.,	Lima, Ohio.
WHELAN, RALPH,	Minneapolis, Minn.
WHIPPLE, SHERMAN L.,	Boston, Mass.
WHITE, BENJAMIN T.,	Omaha, Neb.
WHITE, HENRY C.,	New Haven, Conn.
WHITE, LUTHER,	Chicopee, Mass.
WHITE, PETER,	Marquette, Mich.
WHITE, S. HARRISON,	Pueblo, Col.
WHITELEY, RICHARD H.,	Boulder, Col.
WHITELOCK, GEORGE,	Baltimore, Md.
WHITESIDE, HOUSTON,	Hutchinson, Kan.
WHITNEY, EDWARD B.,	New York, N. Y.
WHITTAKER, EGBERT,	Saugerties, N. Y.
WHITTEMORE, JAMES,	Detroit, Mich.
WIGMAN, J. H. M.,	Green Bay, Wis.
WIGMORE, JOHN H.,	Chicago, Ill.
WILCOX, ANSLEY,	Buffalo, N. Y.
WILCOX, WILLIAM A.,	Scranton, Pa.
WILFLEY, LEBBEUS R.,	St. Louis, Mo.
WILLARD, EDWARD N.,	Scranton, Pa.
WILLARD, GEORGE,	Chicago, Ill.
WILLARD, NORMAN P.,	Chicago, Ill.
WILLCOX, DAVID,	New York, N. Y.
WILLCOX, W. F.,	Chester, Conn.
WILLETT, JOSEPH J.,	Anniston, Ala.
WILLIAMS, CHARLES M.,	Hutchinson, Kan.
WILLIAMS, CHARLES U.,	Richmond, Va.
WILLIAMS, DAVID W.,	Boston, Mass.
WILLIAMS, E. P.,	Galesburg, Ill.
WILLIAMS, E. RANDOLPH,	Richmond, Va.
WILLIAMS, FERDINAND,	Cumberland, Md.
WILLIAMS, HENRY W.,	Baltimore, Md.
WILLIAMS, JOHN G.,	Indianapolis, Ind.
WILLIAMS, P. L.,	Salt Lake City, Utah.
WILLIAMS, ROBERT L.,	Durant, Ind. Ty.
WILLIAMS, R. W.,	Tallahassee, Fla.
WILLIAMS, STEVENSON A.,	Bel Air, Md.

WILLIAMS, W. MOEBY,	Washington, D. C.
WILLIAMSON, SAMUEL E.,	Cleveland, Ohio.
WILLIAMSON, W. PRESTON,	Washington, D. C.
WILLISTON, SAMUEL,	Belmont, Mass.
WILMER L. ALLISON,	La Plata, Md.
WILSON, CHARLES M.,	Grand Rapids, Mich.
WILSON, F. A.,	Bangor, Me.
WILSON, HENRY H.,	Lincoln, Neb.
WILSON, JOHN R.,	Indianapolis, Ind.
WILSON, NATHANIEL,	Washington, D. C.
WILSON, WOODROW,	Princeton, N. J.
WIMBISH, W. A.,	Columbus, Ga.
WINDLE, WILLIAM S.,	West Chester, Pa.
WING, HENRY T.,	New York, N. Y.
WINKLER, FREDERICK C.,	Milwaukee, Wis.
WINTERNITZ, BENJAMIN A.,	New Castle, Pa.
WIRT, JOHN S.,	Elkton, Md.
WISE, JESSE H.,	Pittsburg, Pa.
WISE, JOHN S.,	New York, N. Y.
WISWELL, ANDREW P.,	Ellsworth, Me.
WITHINGTON, DAVID L.,	San Diego, Cal.
WITHROW, JAMES E.,	St. Louis, Mo.
WOLCOTT, EDWARD O.,	Denver, Col.
WOLF, GUSTAVE A.,	Grand Rapids, Mich.
WOLLMAN, HENRY,	New York, N. Y.
WOLVERTON, SIMON P.,	Sunbury, Pa.
WOODARD, CHARLES F.,	Bangor, Me.
WOODMAN, EDWARD,	Portland, Me.
WOODRUFF, EDWIN H.,	Ithaca, N. Y.
WOODRUFF, GEORGE M.,	Litchfield, Conn.
WOODRUFF, ROBERT S.,	Trenton, N. J.
WOODS, CHARLES A.,	Marion, S. C.
WOODS, FRANK H.,	Lincoln, Neb.
WOODS, JOHN CARTER BROWN,	Providence, R. I.
WOODS, WILLIAM W.,	Wallace, Idaho.
WOODWARD, FREDERICK C.,	Chicago, Ill.
WOOLLEY, JAMES H.,	Grand Island, Neb.
WOOLSEY, THEO. S.,	New Haven, Conn.
WOOLWORTH, JAMES M.,	Omaha, Neb.
WORK, JAMES C.,	Uniontown, Pa.
WORKS, JOHN D.,	Los Angeles, Cal.
WORTHINGTON, WILLIAM,	Cincinnati, Ohio.
WURDEMAN, G. A.,	St. Louis, Mo.
WURTS, JOHN,	New Haven, Conn.
WYMAN, HENRY A.,	Boston, Mass.

YANCEY, DAVID WALKER,	Lucena, Tayabas, P. I.
YEAMAN, CALDWELL,	Denver, Col.
YOUMANS, FRANK A.,	Fort Smith, Ark.
YOUNG, DAVID K.,	Clinton, Tenn.
YOUNG, GEORGE B.,	St. Paul, Minn.
YOUNG, GEORGE R.,	Dayton, Ohio.
YOUNG, HENRY E.,	Charleston, S. C.
YOUNKER, B. A.,	Des Moines, Iowa.
ZEISLER, SIGMUND,	Chicago, Ill.

MEMBERS—AUGUST, 1902-1903.

ALABAMA.

BALL, FREDERICK S.,	Montgomery.
HARRISON, GEORGE P.,	Opelika.
HUNDLEY, OSCAR R.,	Huntsville.
LONDON, ALEXANDER T.,	Birmingham.
MCCLELLAN, THOMAS N.,	Montgomery.
RUSSELL, EDWARD L.,	Mobile.
WILLETT, JOSEPH J.,	Anniston.

ALASKA TERRITORY.

HILLS, W. J.,	Juneau.
JENNINGS, ROBERT W.,	Skagway.
PRICE, J. G.,	Skagway.

ARIZONA.

BARNES, WILLIAM H.,	Tucson.
ELLINWOOD, EVERETT E.,	Prescott.
HERNDON, JOHN C.,	Prescott.
KENT, EDWARD,	Phoenix.
MORRISON, ROBERT E.,	Prescott.
SANFORD, ELISHA M.,	Prescott.

ARKANSAS.

CANTRELL, DEADERICK HARRELL,	Little Rock.
COCKRILL, ASHLEY,	Little Rock.
COHN, M. M.,	Little Rock.
DOOLEY, P. C.,	Little Rock.
DUVAL, BEN. T.,	Fort Smith.
FLETCHER, JOHN,	Little Rock.
HILL, JOSEPH M.,	Fort Smith.
HORNER, JOHN J.,	Helena.
MARTIN, THOMAS B.,	Little Rock.
MOORE, JOHN M.,	Little Rock.
MCDONOUGH, JAMES B.,	Fort Smith.
READ, JAMES F.,	Fort Smith.
ROSE, GEORGE B.,	Little Rock.
ROSE, U. M.,	Little Rock.
SMITH, WILLIAM B.,	Little Rock.
TURNER, JESSE,	Van Buren.
YOUNG, FRANK A.,	Fort Smith.

CALIFORNIA.

BRITT, E. W.,	Los Angeles.
CHICKERING, W. H.,	San Francisco.
CORBET, BURKE,	San Francisco.
FULLER, GEORGE,	San Diego.
GIBSON, JAMES A.,	Los Angeles.
HAYNE, ROBERT Y.,	San Francisco.
HELM, LYNN,	Los Angeles.
HUNSAKER, WILLIAM J.,	Los Angeles.
MONROE, CHARLES,	Los Angeles.
MCDONALD, J. WADE,	San Diego.
OLNEY, WARREN,	San Francisco.
OTIS, GEORGE E.,	San Bernardino.
ROSE, WALTER T. J.,	Los Angeles.
SMITH, SAM. FERRY,	San Diego.
TITUS, H. L.,	San Diego.
TRIPPET, OSCAR A.,	Los Angeles.
WITHINGTON, DAVID L.,	San Diego.
WORKS, JOHN D.,	Los Angeles.

COLORADO.

ALLEN, GEORGE W.,	Denver.
BABB, HENRY B.,	Denver.
BABBITT, KURNEL R.,	Colorado Springs.
BARTELS, G. C.,	Denver.
BEAMAN, DAVID C.,	Denver.
BENNETT, EDMON G.,	Denver.
BISSELL, JULIUS B.,	Denver.
BLAIR, JESSE H.,	Denver.
BLOOD, JAMES H.,	Denver.
BONYNGE, ROBERT W.,	Denver.
BOUCK, FRANCIS E.,	Leadville.
BROOKS, FRANKLIN E.,	Colorado Springs.
BRYANT, WM. H.,	Denver.
BUTLER, HUGH,	Denver.
CAMPBELL, CHARLES M.,	Denver.
CAMPBELL, NORMAN M.,	Colorado Springs.
CARPENTER, M. B.,	Denver.
CARPENTER, SAMUEL L.,	Denver.
CATLIN, F. D.,	Montrose.
CAVENDER, CHARLES,	Leadville.
CHITTENDEN, G. I.,	Denver.
CHURCHILL, EDMUND J.,	Denver.
COSTIGAN, EDWARD P.,	Denver.

COLORADO—Continued.

COSTIGAN, GEORGE P., JR.,	Denver.
CURTIS, LEONARD E.,	Colorado Springs.
CUTHBERT, LUCIUS M.,	Denver.
DAVIS, HARRY C.,	Denver.
DAVIS, WALTER W.,	Leadville.
DAWSON, CLYDE C.,	Canon City.
DECKER, WESTBROOK S.,	Denver.
DICKSON, JOHN R.,	Pueblo.
DIMMITT, GEORGE Z.,	Denver.
DINES, ORVILLE L.,	Denver.
DINES, TYSON S.,	Denver.
DOUD, A. L.,	Denver.
DOWNER, SYLVESTER S.,	Boulder.
DUNKLEE, GEORGE F.,	Denver.
EWING, JOHN A.,	Leadville.
FOOTE, ROBERT E.,	Denver.
FOWLER, A. J.,	Denver.
FOWLER, JO. A.,	Denver.
GABBERT, WILLIAM H.,	Denver.
GABRIEL, JOHN H.,	Denver.
GAST, CHARLES E.,	Pueblo.
GILES, BRANCH H.,	Denver.
GODDARD, LUTHER M.,	Denver.
GORDEN, JOHN A.,	Denver.
GOVE, FRANK E.,	Denver.
GREGG, FRANK E.,	Denver.
GRIER, ALBERT E.,	Denver.
GROZIER, JOSHUA,	Denver.
GUNNELL, A. T.,	Colorado Springs.
GUNTER, JULIUS C.,	Denver.
HAGGOTT, W. A.,	Idaho Springs.
HALL, HENRY C.,	Colorado Springs.
HALLETT, MOSES,	Denver.
HARDCASTLE, THOMAS H.,	Denver.
HARRISON, WILLIAM B.,	Denver.
HAYNES, H. N.,	Greeley.
HAYT, CHARLES D.,	Denver.
HERRINGTON, CASS E.,	Denver.
HERSEY, HENRY J.,	Denver.
HINCKLEY, L. E. C.,	Denver.
HODGES, GEORGE L.,	Denver.
HOOD, THOMAS H.,	Denver.
HOYT, LUCIUS W.,	Denver.
HUGHES, CHARLES J., JR.,	Denver.

COLORADO—Continued.

KILLIAN, JAMES R.,	Denver.
LEE, HARRY H.,	Denver.
LINDSEY, BENJAMIN B.,	Denver.
LINDSLEY, HENRY A.,	Denver.
LUNT, HORACE G.,	Colorado Springs.
MANLY, GEORGE C.,	Denver.
MAY, HENRY F.,	Denver.
MERRIMAN, CHARLES A.,	Alamosa.
MILLS, J. WARNER,	Denver.
MCALLISTER, HENRY, JR.,	Colorado Springs.
MCCARTHY, T. F.,	Denver.
MCCREERY, JAMES W.,	Greeley.
McKNIGHT, RICHARD,	Denver.
McLEAN, LESTER,	Denver.
OAKES, EDWARD L.,	Telluride.
O'DONNELL, THOMAS J.,	Denver.
PARSONS, CHARLES C.,	Denver.
REGENNITTER, ERWIN L.,	Idaho Springs.
RIDDELL, HARVEY,	Denver.
ROGERS, HENRY T.,	Denver.
ROGERS, PLATT,	Denver.
SHAFROTH, JOHN F.,	Denver.
SMITH, EDWIN HARVIE,	Denver.
SMITH, JOHN R.,	Denver.
STARKWEATHER, JAMES C.,	Denver.
STEELE, ROBERT W.,	Denver.
STEVENSON, ARCHIE M.,	Denver.
STEVICK, GUY LEROY,	Denver.
STIMSON, EDWARD C.,	Colorado Springs.
TALBOTT, RALPH,	Denver.
TATUM, LOUIS R.,	Denver.
TEARS, DANIEL W.,	Denver.
TELLER, WILLARD,	Denver.
THAYER, RUFUS C.,	Colorado Springs.
THOMAS, CHARLES S.,	Denver.
THOMSON, CHARLES I.,	Denver.
TROWBRIDGE, HENRY,	Cripple Creek.
VAILLE, JOEL F.,	Denver.
VANCISE, EDWIN,	Denver.
VATES, WILLIAM B.,	Pueblo.
WADLEY, WILLIAM H.,	Denver.
WALLING, STUART D.,	Denver.
WARD, THOMAS, JR.,	Denver.
WATERMAN, CHARLES W.,	Denver.

COLORADO—Continued.

WHITE, S. HARRISON,	Pueblo.
WHITELEY, RICHARD H.,	Boulder.
WOLCOTT, EDWARD O.,	Denver.
YEAMAN, CALDWELL,	Denver.

CONNECTICUT.

ARVINE, E. P.,	New Haven.
BALDWIN, SIMEON E.,	New Haven.
BEARDSLEY, MORRIS B.,	Bridgeport.
BEERS, GEORGE E.,	New Haven.
BREWSTER, LYMAN D.,	Danbury.
BRISCOE, CHARLES H.,	Hartford.
CLARK, JAMES GARDNER,	New Haven.
CONANT, GEORGE A.,	Hartford.
CULVER, M. EUGENE,	Middletown.
CURTIS, JULIUS B.,	Stamford.
GAGER, EDWIN B.,	Derby.
HARRIMAN, EDWARD AVERY,	Derby.
HARRISON, LYNDE,	New Haven.
HUBBARD, LEVERETT M.,	Wallingford.
HYDE, WILLIAM W.,	Hartford.
KELLOGG, STEPHEN W.,	Waterbury.
KNAPP, HOWARD H.,	Bridgeport.
MALTBIE, THEODORE M.,	Granby.
NEWTON, HENRY G.,	New Haven.
PHELPS, CHARLES,	Rockville.
RAYNOLDS, EDWARD V.,	New Haven.
ROBBINS, EDWARD D.,	Hartford.
ROGERS, EDWARD H.,	New Haven.
ROGERS, HENRY WADE,	New Haven.
RUSSELL, TALCOTT H.,	New Haven.
SCOTT, HOWARD B.,	Danbury.
SEARLES, CHARLES E.,	Putnam.
STANTON, LEWIS E.,	Hartford.
STODDARD, WILLIAM B.,	New Haven.
TORRANCE, DAVID,	Derby.
TOWNSEND, WILLIAM K.,	New Haven.
TUTTLE, J. BIRNEY,	New Haven.
WALSH, R. JAY,	Greenwich.
WARNER, DONALD T.,	Salisbury.
WATROUS, GEORGE D.,	New Haven.
WAYLAND, FRANCIS,	New Haven.
WEBB, JAMES H.,	New Haven.

CONNECTICUT—Continued.

WHITE, HENRY C.,	New Haven.
WILCOX, W. F.,	Chester.
WOODRUFF, GEORGE M.,	Litchfield.
WOOLSEY, THEO. S.,	New Haven.
WURTS, JOHN,	New Haven.

DELAWARE.

BRADFORD, EDWARD G.,	Wilmington.
GARLAND, SPOTTSWOOD,	Wilmington.
GRAY, GEORGE,	Wilmington.
HIGGINS, ANTHONY,	Wilmington.
HILLES, WILLIAM S.,	Wilmington.
LORE, CHARLES B.,	Wilmington.
NICHOLSON, JOHN R.,	Dover.
NIELDS, BENJAMIN,	Wilmington.
NIELDS, JOHN P.,	Wilmington.
SAULSBURY, WILLARD,	Wilmington.
WARD, HERBERT H.,	Wilmington.

DISTRICT OF COLUMBIA.

ABERT, WILLIAM STONE,	Washington.
ASHTON, J. HUBLEY,	Washington.
BALDWIN, WILLIAM D.,	Washington.
BERRY, WALTER V. R.,	Washington.
BLAIR, JOHN S.,	Washington.
BOND, S. R.,	Washington.
BREWER, DAVID J.,	Washington.
BROWN, CHAPIN,	Washington.
BROWNE, ALDIS B.,	Washington.
BROWNE, ARTHUR S.,	Washington.
CHURCH, JOSEPH B.,	Washington.
CHURCH, MELVILLE,	Washington.
DAVIS, HENRY E.,	Washington.
DODGE, WILLIAM W.,	Washington.
DOWELL, JULIAN C.,	Washington.
EDMONSTON, WILLIAM E.,	Washington.
EDSON JOSEPH R.,	Washington.
FISHER, ROBERT J.,	Washington.
FISHER, SAMUEL T.,	Washington.
FOSTER, CHARLES E.,	Washington.
FRAZIER, ROBERT T.,	Washington.
GREELEY, ARTHUR P.,	Washington.
HAGNER, ALEXANDER B.,	Washington.

DISTRICT OF COLUMBIA.—Continued.

HAMILTON, GEORGE EARNEST,	Washington.
HARLAN, JOHN MARSHALL,	Washington.
HAYDEN, JAMES H.,	Washington.
HINE, LEMON G.,	Washington.
HOWARD, GEORGE H.,	Washington.
KENNEDY, CRAMMOND,	Washington.
KING, GEORGE A.,	Washington.
LAMBERT, TALLMADGE A.,	Washington.
LAMBERT, WILTON J.,	Washington.
LANCASTER, CHARLES C.,	Washington.
LARNER, JOHN B.,	Washington.
LECKIE, A. E. L.,	Washington.
LEE, BLAIR,	Washington.
MADDOX, SAMUEL,	Washington.
MAURO, PHILIP,	Washington.
MELOY, WILLIAM A.,	Washington.
MICHENER, L. T.,	Washington.
MILLER, WILLIAM J.,	Washington.
MORRIS, M. F.,	Washington.
MORSE, A. PORTER,	Washington.
MCCAMMON, JOSEPH K.,	Washington.
MCGILL, J. NOTA,	Washington.
McKENNEY, FREDERIC D.,	Washington.
NEEDHAM, CHARLES W.,	Washington.
PAGE, THOMAS NELSON,	Washington.
PAYNE, JAMES G.,	Washington.
PERRY, R. ROSS, JR.,	Washington.
PRINDLE, EDWIN J.,	Washington.
RALSTON, JACKSON H.,	Washington.
SELDEN, JOHN,	Washington.
SEYMOUR, HENRY A.,	Washington.
SHEPARD, SETH,	Washington.
SMITH, LUTHER R.,	Washington.
SNOW, ALPHEUS H.,	Washington.
STURTEVANT, CHARLES L.,	Washington.
WILLIAMS, W. MOSBY,	Washington.
WILLIAMSON, W. PRESTON,	Washington.
WILSON, NATHANIEL,	Washington.

FLORIDA.

AVERY, JOHN C.,	Pensacola.
AXTELL, EZRA P.,	Jacksonville.
BAKER, WILLIAM H.,	Jacksonville.

FLORIDA—Continued.

BEDELL, GEORGE C.,	Jacksonville.
BISBEE, HORATIO,	Jacksonville.
BLOUNT, WILLIAM A.,	Pensacola.
FLETCHER, D. U.,	Jacksonville.
HARTRIDGE, JOHN E.,	Jacksonville.
LIDDON, BENJ. S.,	Marianna.
MASSEY, LOUIS C.,	Orlando.
RHINEHART, C. D.,	Jacksonville.
WILLIAMS, R. W.,	Tallahassee.

GEORGIA.

ABBOTT, B. F.,	Atlanta.
ADAMS, SAMUEL B.,	Savannah.
AKIN, JOHN W.,	Cartersville.
ARNOLD, REUBEN R.,	Atlanta.
BARROW, POPE,	Savannah.
BARTLETT, CHARLES L.,	Macon.
BRANDON, MORRIS,	Atlanta.
BROWN, EDWARD T.,	Atlanta.
CANN, GEORGE T.,	Savannah.
CANN, J. FERRIS,	Savannah.
CHARLTON, WALTER G.,	Savannah.
CROVATT, A. J.,	Brunswick.
CUMMING, JOSEPH B.,	Augusta.
CUNNINGHAM, HENRY C.,	Savannah.
CUNNINGHAM, T. M., Jr.,	Savannah.
DELACY, JOHN F.,	Eastman.
DUBIGNON, FLEMING G.,	Savannah.
ELLIS, W. D.,	Atlanta.
ERWIN, R. G.,	Savannah.
GARRARD, LOUIS F.,	Columbus.
GOETCHIUS, HENRY R.,	Columbus.
GORDON, W. W., JR.,	Savannah.
HAMMOND, WILLIAM R.,	Atlanta.
HARRIS, MARION W.,	Macon.
HILL, WALTER B.,	Athens.
KAY, WILLIAM E.,	Brunswick.
LAMAR, JOSEPH R.,	Augusta.
LAWTON, ALEXANDER R.,	Savannah.
LEAKEN, WILLIAM R.,	Savannah.
MACKALL, WILLIAM W.,	Savannah.
MELDRIM, P. W.,	Savannah.
MERRILL, JOSEPH HANSELL,	Thomasville.

GEORGIA.—Continued.

MILLER, FRANK H.,	Angusta.
MILLER, WILLIAM K.,	Angusta.
McALPIN, HENRY,	Savannah.
McINTOSH, J. R.,	Atlanta.
McWHORTER, HAMILTON,	Lexington.
OWENS, GEORGE W.,	Savannah.
SEABROOK, PAUL E.,	Pineora.
SMITH, BURTON,	Atlanta.
TOMPKINS, HENRY B.,	Atlanta.
WIMBISH, W. A.,	Columbus.

IDAHO.

MAYHEW, ALEXANDER E.,	Wallace.
ROBB, BAMFORD A.,	Boise.
WOODS, WILLIAM W.,	Wallace.

ILLINOIS.

ANDREWS, JAMES D.,	Chicago.
BALDWIN, JESSE A.,	Chicago.
BANCROFT, EDGAR A.,	Chicago.
BANNING, EPHRAIM,	Chicago.
BARTON, GEORGE P.,	Chicago.
BEACH, MYRON H.,	Chicago.
BEALE, WILLIAM G.,	Chicago.
BLAIR, FRANK PRESTON,	Chicago.
BONNEY, C. C.,	Chicago.
BOND, LESTER L.,	Chicago.
BRADWELL, JAMES B.,	Chicago.
BROWN, CHARLES A.,	Chicago.
BROWN, TAYLOR E.,	Chicago.
BURNHAM, TELFORD,	Chicago.
BURROUGHS, BENJAMIN R.,	Edwardsville.
BURBY, WILLIAM,	Chicago.
CAPEN, CHARLES L.,	Bloomington.
CATE, ALBION,	Chicago.
CHANCELLOR, JUSTUS,	Chicago.
DANIELS, FRANCIS B.,	Chicago.
DENEEN, CHARLES S.,	Chicago.
DENT, THOMAS,	Chicago.
DICKINSON, J. M.,	Chicago.
DREW, WILLIAM L.,	Urbana.
DYRENFORTH, PHILIP C.,	Chicago.
DYRENFORTH, WILLIAM H.,	Chicago.

ILLINOIS.—Continued.

EASTMAN, SYDNEY C.,	Chicago.
FENTRESS, JAMES,	Chicago.
FIELD, HEMAN H.,	Chicago.
FLOWER, JAMES M.,	Chicago.
FOLLANSBEE, GEORGE A.,	Chicago.
FROST, E. ALLEN,	Chicago.
FURNESS, WILLIAM ELIOT,	Chicago.
GARTSIDE, JOHN M.,	Chicago.
GIBBONS, JOHN,	Chicago.
GOODRICH, ADAMS A.,	Chicago.
GREGORY, STEPHEN S.,	Chicago.
GROSSCUP, PETER S.,	Chicago.
HALL, THOMAS L.,	Chicago.
HAMLIN, JOHN H.,	Chicago.
HARDING, CHARLES F.,	Chicago.
HEBARD, FREDERIC S.,	Chicago.
HERRICK, JOHN J.,	Chicago.
HILL, LYSANDER,	Chicago.
HOLDON, JESSE,	Chicago.
HURD, HARVEY B.,	Chicago.
JEWETT, JOHN N.,	Chicago.
JUNKIN, FRANCIS T. A.,	Chicago.
KENNA, EDWARD D.,	Chicago.
KRAUTHOFF, L. C.,	Chicago.
KRETZINGER, GEORGE W.,	Chicago.
LACKNER, FRANCIS,	Chicago.
LAWSON, WILLIAM C.,	Chicago.
LEE, BLEWETT,	Chicago.
LEVINSON, S. O.,	Chicago.
LOESCH, FRANK J.,	Chicago.
LOWDEN, FRANK O.,	Chicago.
MACK, JULIAN W.,	Chicago.
MANNING, WILLIAM J.,	Chicago.
MARTIN, HORACE H.,	Chicago.
MATHER, ROBERT,	Chicago.
MERRICK, GEORGE PECK,	Chicago.
MILLER, JOHN S.,	Chicago.
MORAN, THOMAS A.,	Chicago.
MOSES, ADOLPH,	Chicago.
MUSGRAVE, HARRISON,	Chicago.
MCCORDIC, ALFRED E.,	Chicago.
MC ELROY, JOHN H.,	Chicago.
OFFIELD, CHARLES K.,	Chicago.
OGDEN, HOWARD N.,	Chicago.

ILLINOIS.—Continued.

OTIS, EPHRAIM A.,	Chicago.
PADDOCK, GEORGE L.,	Chicago.
PAGE, GEORGE T.,	Peoria.
PARKINSON, ROBERT H.,	Chicago.
PECK, GEORGE R.,	Chicago.
PINGREY, D. H.,	Bloomington.
PRUSSING, EUGENE E.,	Chicago.
RAYMOND, JAMES H.,	Chicago.
RECTOR, EDWARD,	Chicago.
REED, FRANK F.,	Chicago.
RICHBERG, JOHN C.,	Chicago.
RINAHER, JOHN I.,	Carlinville.
RITSHER, EDWARD C.,	Chicago.
ROBBINS, HENRY S.,	Chicago.
ROGERS, ELMER E.,	Chicago.
ROGERS, GEORGE MILLS,	Chicago.
ROSENTHAL, JULIUS,	Chicago.
RUBENS, HARRY,	Chicago.
RUNNELLS, JOHN S.,	Chicago.
SANDERS, GEORGE A.,	Springfield.
SCOTT, FRANK H.,	Chicago.
SCOTT, JAMES B.,	Champaign.
SHERIFF, ANDREW R.,	Chicago.
SHERMAN, E. B.,	Chicago.
SMITH, EDWIN BURRITT,	Chicago.
STARR, MERRITT,	Chicago.
STILLMAN, HERMAN W.,	Chicago.
SYNNESTVEDT, PAUL,	Chicago.
TENNEY, HORACE KENT,	Chicago.
THOMAN, LEROY D.,	Chicago.
THORNTON, CHARLES S.,	Chicago.
TOWLE, HENRY S.,	Chicago.
ULLMAN, FREDERIC,	Chicago.
VROMAN, CHARLES E.,	Chicago.
WALL, GEORGE W.,	Du Quoin.
WARVELLE, GEORGE W.,	Chicago.
WASHBURNE, WILLIAM D.,	Chicago.
WEST, ROY O.,	Chicago.
WHEELER, ARTHUR DANA,	Chicago.
WIGMORE, JOHN H.,	Chicago.
WILLARD, GEORGE,	Chicago.
WILLARD, NORMAN P.,	Chicago.
WILLIAMS, E. P.,	Galesburg.

ILLINOIS—Continued.

WOODWARD, FREDERICK C.,	Chicago.
ZEISLER, SIGMUND,	Chicago.

INDIAN TERRITORY.

JACKSON, CLIFFORD L.,	Muskogee.
RALLS, JOSEPH G.,	Atoka.
WILLIAMS, ROBERT L.,	Durant.

INDIANA.

BEAUCHAMP, ROBERT B.,	Tipton.
BRADFORD, CHESTER,	Indianapolis.
BRADY, ARTHUR W.,	Muncie.
BREEN, WILLIAM P.,	Fort Wayne.
BUSHNELL, WILLIAM S.,	Monticello.
BUTLER, NOBLE C.,	Indianapolis.
CARSON, JOHN F.,	Indianapolis.
CHAMBERS, SMILEY N.,	Indianapolis.
CLAPHAM, WILLIAM E.,	Bloomington.
CLARKE, GEORGE E.,	South Bend.
DANIELS, EDWARD,	Indianapolis.
DAVIS, SYDNEY B.,	Indianapolis.
DAVIS, THEODORE P.,	Indianapolis.
DYE, JOHN T.,	Indianapolis.
ELLIOTT, WILLIAM F.,	Indianapolis.
EVANS, ROWLAND,	Indianapolis.
FAIRBANKS, CHARLES W.,	Indianapolis.
FESLER, JAMES WILLIAM,	Indianapolis.
FRASER, DANIEL,	Fowler.
FREY, PHILIP W.,	Evansville.
GOULD, JOHN H.,	Delphi.
HAMMOND, EDWIN P.,	La Fayette.
HAWKINS, ROSCOE O.,	Indianapolis.
HEROD, WILLIAM PIRTLE,	Indianapolis.
INGLER, FRANCIS M.,	Indianapolis.
JAMESON, OVID B.,	Indianapolis.
JOSS, FREDERICK A.,	Indianapolis.
KELLEY, WILLIAM H.,	Richmond.
KERN, JOHN W.,	Indianapolis.
KETCHAM, WILLIAM A.,	Indianapolis.
LESH, U. S.,	Huntington.
LOCKWOOD, VIRGIL H.,	Indianapolis.
MARTINDALE, CHARLES,	Indianapolis.
MILLER, CHARLES W.,	Goshen.

INDIANA.—Continued.

MONTGOMERY, OSCAR H.,	Seymour.
MOORES, CHARLES W.,	Indianapolis.
MOORES, MERRILL,	Indianapolis.
MORRIS, JOHN, JR.,	Fort Wayne.
MORRIS, NATHAN,	Indianapolis.
MYERS, QUINCY A.,	Logansport.
NEWBERGER, LOUIS,	Indianapolis.
NOEL, JAMES W.,	Indianapolis.
PALMER, TRUMAN F.,	Monticello.
PENFIELD, W. L. (State Dep't, Washington, D.C.),	Auburn.
PICKENS, SAMUEL O.,	Indianapolis.
PICKENS, WILLIAM A.,	Indianapolis.
REINHARD, GEORGE L.,	Bloomington.
ROGERS, WILLIAM P.,	Bloomington.
ROSE, JAMES E.,	Auburn.
ROSE, JAMES H.,	Auburn.
SAYLER, SAMUEL M.,	Huntington.
SELLERS, EMORY B.,	Monticello.
SMITH, ALONZO GREENE,	Indianapolis.
SMITH, CHARLES W.,	Indianapolis.
SPENCER, CHARLES C.,	Monticello.
STEVENSON, ELMER E.,	Indianapolis.
STUART, WILLIAM V.,	La Fayette.
SWAN, ELBERT M.,	Rockport.
TAYLOR, R. S.,	Fort Wayne.
TAYLOR, WILLIAM L.,	Indianapolis.
VINTON, HENRY H.,	La Fayette.
WARD, WILBERT,	South Bend.
WILLIAMS, JOHN G.,	Indianapolis.
WILSON, JOHN R.,	Indianapolis.

IOWA.

ALLISON, WILLIAM B.,	Dubuque.
BURK, W. D.,	Muscatine.
CANADAY, WALTER,	Madrid.
CLIGGETT, JOHN,	Mason City.
COLE, C. C.,	Des Moines.
CRAIG, JOHN E.,	Keokuk.
CROSBY, JAMES O.,	Garnavillo.
CUMMINS, A. B.,	Des Moines.
DAVIS, JAMES C.,	Keokuk.
DEERY, JOHN,	Dubuque.
DEVITT, J. F.,	Muscatine.

IOWA.—Continued.

DILLE, JOHN I.,	Des Moines.
DUNCOMBE, JOHN F.,	Fort Dodge.
EATON, W. L.,	Osage.
GREGORY, CHARLES NOBLE,	Iowa City.
GUERNSEY, NATHANIEL T.,	Des Moines.
HAINES, ROBERT M.,	Grinnell.
HENDERSON, DAVID B.,	Dubuque.
HUNTER, ROBERT,	Sioux City.
KINNE, L. G.,	Des Moines.
KNIGHT, W. J.,	Dubuque.
LONGUEVILLE, J. C.,	Dubuque.
MOFFIT, JOHN T.,	Tipton.
MCCARTHY, J. J.,	Dubuque.
MCCLAIN, EMLIN,	Iowa City.
MCCONLOGUE, JAMES H.,	Mason City.
PARSONS, JAMES M.,	Rock Rapids.
QUARTON, WILLIAM B.,	Algona.
REED, H. T.,	Cresco.
RICHARDS, HARRY S.,	Iowa City.
ROBERTS, W. J.,	Keokuk.
SAWYER, HAZEN I.,	Keokuk.
SEEVERS, GEORGE W.,	Oskaloosa.
SHERWIN, JOHN C.,	Mason City.
SHIRAS, OLIVER P.,	Dubuque.
STILLMAN, WALTER S.,	Council Bluffs.
SWETTING, ERNEST V.,	Algona.
SWISHER, A. E.,	Iowa City.
WADE, M. J.,	Iowa City.
YOUNKER, B. A.,	Des Moines.

KANSAS.

CAMPBELL, PHILIP P.,	Pittsburgh.
ECKSTEIN, O. G.,	Wichita.
GREEN, J. W.,	Lawrence.
HIGGINS, WILLIAM E.,	Lawrence.
HOLT, WILLIAM G.,	Kansas City.
MARTIN, FRANK L.,	Hutchinson.
MILLIKEN, JOHN D.,	McPherson.
MOORE, J. McCABE,	Kansas City.
SMITH, CHARLES B.,	Topeka.
WAGGENER, BALIE P.,	Atchison.
WALL, THOMAS B.,	Wichita.
WHITESIDE, HOUSTON,	Hutchinson.
WILLIAMS, CHARLES M.,	Hutchinson.

KENTUCKY.

ALLEN, JOHN R.,	Lexington.
ALLEN, LAFON,	Louisville.
BASKIN, JOHN B.,	Louisville.
BRUCE, HELM,	Louisville.
BULLITT, THOMAS W.,	Louisville.
BULLITT, WILLIAM MARSHALL,	Louisville.
DEMBITZ, LEWIS N.,	Louisville.
ELLIS, W. T.,	Owensboro.
GILBERT, GEORGE G.,	Shelbyville.
GRUBBS, CHARLES S.,	Louisville.
HARRIS, W. O.,	Louisville.
HELM, JAMES P.,	Louisville.
HUGHES, D. H.,	Morganfield.
KOHN, AARON,	Louisville.
MACKOY, WILLIAM H. (Cincinnati, O.),	Covington.
MACPHERSON, ERNEST,	Louisville.
MORTON, J. R.,	Lexington.
MCDERMOTT, EDWARD J.,	Louisville.
PIRTLE, JAMES S.,	Louisville.
RAY, CHARLES T.,	Louisville.
SHERLEY, SWAGAR,	Louisville.
STONE, HENRY L.,	Louisville.
THUM, WILLIAM WARWICK,	Louisville.
TONEY, STERLING B.,	Louisville.
TRABUE, E. F.,	Louisville.
WATTS, WILLIAM W.,	Louisville.

LOUISIANA.

ALEXANDER, TALIAFERRO,	Shreveport.
BENEDICT, W. S.,	New Orleans.
BRICE, ALBERT G.,	New Orleans.
CAFFERY, DONELSON,	Franklin.
CAHN, EDGAR M.,	New Orleans.
DART, HENRY P.,	New Orleans.
DENÉGRE, GEORGE,	New Orleans.
DENÉGRE, WALTER D.,	New Orleans.
FARRAR, EDGAR H.,	New Orleans.
FLORANCE, ERNEST T.,	New Orleans.
FORMAN, BENJAMIN RICE,	New Orleans.
HALL, HARRY H.,	New Orleans.
HART, W. O.,	New Orleans.
HOWE, WILLIAM WIET,	New Orleans.
HUNT, CARLETON,	New Orleans.

LOUISIANA.—Continued.

KERNAN, THOMAS J.,	Baton Rouge.
KRUTTSCHITT, ERNEST B.,	New Orleans.
LEGENDRE, JAMES,	New Orleans.
MARR, ROBERT H., JR.,	New Orleans.
MERRICK, EDWIN T.,	New Orleans.
MCCLOSKEY, BERNARD,	New Orleans.
ROST, EMILE,	New Orleans.

MAINE.

APPLETON, FREDERICK H.,	Bangor.
BELCHER, S. CLIFFORD,	Farmington.
BIRD, GEORGE E.,	Portland.
COOK, CHARLES SUMNER,	Portland.
EMERY, LUCILLIUS A.,	Ellsworth.
HALE, CLARENCE,	Portland.
HAMLIN, CHARLES	Bangor.
HAMLIN, HANNIBAL E.,	Ellsworth.
HIGGINS, FRANK M.,	Limerick.
LIBBY, CHARLES F.,	Portland.
LITTLEFIELD, CHARLES E.,	Rockland.
MADIGAN, JOHN B.,	Houlton.
PETERS, JOHN A.,	Bangor.
POWERS, FREDERICK A.,	Houlton.
SKELTON, WILLIAM B.,	Lewiston.
SNOW, DAVID W.,	Portland.
STROUT, SEWALL C.,	Portland.
SYMONDS, JOSEPH W.,	Portland.
WILSON, F. A.,	Bangor.
WISWELL, ANDREW P.,	Ellsworth.
WOODARD, CHARLES F.,	Bangor.
WOODMAN, EDWARD,	Portland.

MARYLAND.

ADKINS, WILLIAM H.,	Easton.
ALEXANDER, JULIAN J.,	Baltimore.
BARROLL, HOPE H.,	Chestertown.
BERNARD, RICHARD,	Baltimore.
BONAPARTE, CHARLES J.,	Baltimore.
BRANTLY, WILLIAM T.,	Baltimore.
BRISCOE, JOHN P.,	Prince Frederick.
BROWN, STEWART,	Baltimore.
BUCKLER, WILLIAM H.,	Baltimore.
CAREY, FRANCIS K.,	Baltimore.

MARYLAND.—Continued.

COLTON, WILLIAM,	Baltimore.
COWEN, JOHN K.,	Baltimore.
CROSS, E. J. D.,	Baltimore.
DAWKINS, WALTER I.,	Baltimore.
DAWSON, WILLIAM H.,	Baltimore.
DEVECMON, WILLIAM C.,	Cumberland.
DOUB, ALBERT A.,	Cumberland.
GAITHER, GEORGE R., JR.,	Baltimore.
GANS, EDGAR H.,	Baltimore.
GREGG, MAURICE,	Baltimore.
HARLAN, HENRY D.,	Baltimore.
HARLEY, CHARLES F.,	Baltimore.
HAYES, THOMAS G.,	Baltimore.
HENDERSON, ROBERT R.,	Cumberland.
HINKLEY, JOHN,	Baltimore.
HISKY, THOMAS FOLEY,	Baltimore.
HOULTON, SAMUEL C.,	Baltimore.
HOWARD, CHARLES MORRIS,	Baltimore.
HUGHES, THOMAS,	Baltimore.
KNOTT, A. LEO,	Baltimore.
LEAKIN, J. WILSON,	Baltimore.
LOWNDES, LLOYD,	Cumberland.
MACKALL, THOMAS B.,	Baltimore.
MANBURY, WILLIAM L.,	Baltimore.
MILES, JOSHUA W.,	Princess Anne.
MORRIS, THOMAS J.,	Baltimore.
MULLIN, MICHAEL A.,	Baltimore.
MCCOMAS, LOUIS E.,	Williamsport.
PAGE, HENRY,	Princess Anne.
PERKINS, WILLIAM H., JR.,	Baltimore.
PHELPS, CHARLES E.,	Baltimore.
POE, JOHN PRENTISS,	Baltimore.
PURNELL, CLAYTON,	Frostburg.
RICHMOND, BENJAMIN A.,	Cumberland.
ROBINSON, RALPH,	Baltimore.
ROBINSON, THOMAS H.,	Bel Air.
ROGERS, ROBERT LYON,	Baltimore.
SAMS, CONWAY W.,	Baltimore.
SCHMUCKER, SAMUEL D.,	Baltimore.
SHARP, GEORGE M.,	Baltimore.
SLOAN, D. LINDLEY,	Cumberland.
STEUART, ARTHUR,	Baltimore.
STOCKBRIDGE, HENRY,	Baltimore.
THOMAS, WILLIAM S.,	Baltimore.

MARYLAND.—Continued.

VENABLE, RICHARD M.,	Baltimore.
WALSH, WILLIAM E.,	Cumberland.
WALTER, M. R.,	Baltimore.
WARFIELD, EDWIN,	Baltimore.
WATERS, J. S. T.,	Baltimore.
WHITELOCK, GEORGE,	Baltimore.
WILLIAMS, FERDINAND,	Cumberland.
WILLIAMS, HENRY W.,	Baltimore.
WILLIAMS, STEVENSON A.,	Bel Air.
WILMER, L. ALLISON,	La Plata.
WIRT, JOHN S.,	Elkton.

MASSACHUSETTS.

ADAMS, WALTER,	So. Framingham.
ALLEN, FRANK D.,	Boston.
AMES, JAMES BARR,	Cambridge.
ANDERSON, GEORGE W.,	Boston.
APPLETON, JOHN H.,	Boston.
BARNES, CHARLES B., JR.,	Boston.
BEALE, JOSEPH HENRY, JR.,	Cambridge.
BELL, C. U.,	Andover.
BENNETT, SAMUEL C.,	Boston.
BIGELOW, MELVILLE M.,	Boston.
BRANDEIS, LOUIS D.,	Boston.
BRANNAN, J. DODDRIDGE,	Cambridge.
BROOKS, FRANCIS A.,	Boston.
BULLOCK, A. G.,	Worcester.
BUMPUS, EVERETT C.,	Boston.
CARVER, EUGENE P.,	Boston.
CHAMPLIN, EDGAR R.,	Boston.
CHANDLER, ALFRED D.,	Boston.
CLAPP, ROBERT P.,	Lexington.
CLARK, I. R.,	Boston.
CLIFFORD, CHARLES W.,	New Bedford.
COOLIDGE, WILLIAM H.,	Boston.
COPELAND, ALFRED M.,	Springfield.
CORCORAN, JOHN W.,	Boston.
COTTER, JAMES E.,	Boston.
CRAPO, WILLIAM W.,	New Bedford.
CROCKER, GEORGE G.,	Boston.
CUNNINGHAM, FREDERIC,	Boston.
DABNEY, L. S.,	Boston.
DAVIS, SIMON,	Boston.

MASSACHUSETTS.—Continued.

DEWEY, HENRY S.,	Boston.
DICKINSON, M. F.,	Boston.
DILLAWAY, W. E. L.,	Boston.
DODGE, FREDERIC,	Boston.
FALL, GEORGE HOWARD,	Malden.
FISH, FREDERICK P.,	Boston.
FOSTER, ALFRED D.,	Boston.
FOSTER, REGINALD,	Boston.
FOX, JABEZ,	Boston.
FRENCH, WILLIAM B.,	Boston.
FRIEDMAN, LEE M.,	Boston.
GALLAGHER, CHARLES T.,	Boston.
GARGAN, THOMAS J.,	Boston.
GIDDINGS, CHARLES,	Great Barrington
GOODWIN, FRANK,	Boston.
GRAY, JOHN C.,	Boston.
GREENE, FREDERICK L.,	Greenfield.
HALL, BORDMAN,	Boston.
HEMENWAY, ALFRED,	Boston.
HOWE, ELMER P.,	Boston.
HUNT, FREEMAN,	Boston.
HURLBUTT, HENRY F.,	Boston.
JENNINGS, ANDREW J.,	Fall River.
JOHNSON, BENJAMIN N.,	Boston.
JONES, LEONARD A.,	Boston.
KEITH, IRA B.,	Lynn.
KELLEN, WILLIAM V.,	Boston.
KNOWLTON, HOSEA M.,	Boston.
LADD, BABSON S.,	Boston.
LADD, NATH. W.,	Boston.
LAMB, SAMUEL O.,	Greenfield.
LINCOLN, SOLOMON,	Boston.
MORSE, GODFREY,	Boston.
MORSE, ROBERT M.,	Boston.
MUNROE, WILLIAM A.,	Boston.
MYERS, JAMES J.,	Boston.
McEVoy, JOHN W.,	Lowell.
OLNEY, RICHARD,	Boston.
PARKER, EDMUND M.,	Boston.
PAYSON, EDWARD P.,	Boston.
PIERCE, EDWARD P.,	Fitchburg.
PROCTOR, THOMAS W.,	Boston.
PUTNAM, WILLIAM L.,	Boston.
RANNEY, FLETCHER,	Boston.

MASSACHUSETTS.—Continued.

RICHARDSON, GEORGE F.,	Lowell.
RICHARDSON, W. K.,	Boston.
ROBERTS, GEORGE L.,	Boston.
RUSSELL, CHARLES THEODORE,	Cambridge.
SAWYER, ALFRED P.,	Lowell.
SCAIFE, LAURISTON L.,	Boston.
SCHOFIELD, WILLIAM,	Boston.
SCHOULER, JAMES,	Boston.
SHEPARD, HARVEY N.,	Boston.
SMITH, HENRY HYDE,	Boston.
SMITH, JEREMIAH,	Cambridge.
SPRING, ARTHUR L.,	Boston.
STIMSON, FREDERIC J.,	Boston.
STONE, FREDERIC M.,	Boston.
STOREY, MOORFIELD,	Boston.
STORROW, JAMES J., JR.,	Boston.
STRATTON, CHARLES E.,	Boston.
SWAN, CHARLES H.,	Boston.
SWAN, WILLIAM W.,	Boston.
SWASEY, GEORGE R.,	Boston.
TUCKER, GEORGE F.,	Boston.
TYLER, CHARLES H.,	Boston.
WAMBAUGH, EUGENE,	Cambridge.
WARNER, JOSEPH B.,	Boston.
WARREN, SAMUEL D.,	Boston.
WELLMAN, ARTHUR H.,	Boston.
WESTON-SMITH, R. D.,	Boston.
WHIPPLE, SHERMAN L.,	Boston.
WHITE, LUTHER,	Chicopee.
WILLIAMS, DAVID W.,	Boston.
WILLISTON, SAMUEL,	Belmont.
WYMAN, HENRY A.,	Boston.

MICHIGAN.

BALL, DAN H.,	Marquette.
BARRY, EDMUND D.,	Grand Rapids.
BATES, GEORGE W.,	Detroit.
BEAUMONT, JOHN W.,	Detroit.
BISSELL, JOHN H.,	Detroit.
BOUDEMAN, DALLAS,	Kalamazoo.
BUNDY, McGEORGE,	Grand Rapids.
CAMPBELL, CHARLES H.,	Detroit.
CAMPBELL, HENRY M.,	Detroit.

MICHIGAN.—Continued.

CHADBOURNE, THOMAS L.,	Houghton.
COWLES, ISRAEL T.,	Detroit.
CRANE, ALBERT,	Grand Rapids.
DENISON, ARTHUR C.,	Grand Rapids.
DICKINSON, DON M.,	Detroit.
DRIGGS, FREDERICK E.,	Detroit.
DUFFIELD, HENRY M.,	Detroit.
DURAND, LORENZO T.,	Saginaw, E. S.
FITZGERALD, JOHN C.,	Grand Rapids.
HALL, EDMUND,	Detroit.
HANCHETT, BENTON,	Saginaw, W. S.
HARMON, HENRY A.,	Detroit.
HARSHA, WALTER S.,	Detroit.
HATCH, REUBEN,	Grand Rapids.
HAYDEN, GEORGE,	Ishpeming.
HOYT, HIRAM J.,	Muskegon.
HUTCHINS, HARRY B.,	Ann Arbor.
HYDE, WESLEY W.,	Grand Rapids.
JACOKES, JAMES A.,	Pontiac.
JANUARY, WILLIAM L.,	Detroit.
KEENEY, WILLARD F.,	Grand Rapids.
KELLY, RONALD,	Detroit.
KENT, CHARLES A.,	Detroit.
KINGSLEY, WILLARD,	Grand Rapids.
KINNE, EDWARD D.,	Ann Arbor.
KNAPPEN, LOYAL E.,	Grand Rapids.
LANE, V. H.,	Ann Arbor.
LIGHTNER, CLARENCE A.,	Detroit.
LILLIBRIDGE, WILLARD M.,	Detroit.
MECHEM, FLOYD R.,	Ann Arbor.
MEDDAUGH, ELIJAH W.,	Detroit.
MOORE, JOSEPH B.,	Lansing.
MOORE, WILLIAM A.,	Detroit.
MCGARRY, THOMAS F.,	Grand Rapids.
NORRIS, MARK,	Grand Rapids.
O'BRIEN, THOMAS J.,	Grand Rapids.
OSTRANDER, RUSSELL C.,	Lansing.
PARKHURST, JOHN G.,	Coldwater.
PATTERSON, JOHN C.,	Marshall.
PATTERSON, JOHN H.,	Pontiac.
PATTON, JOHN,	Grand Rapids.
POND, ASHLEY,	Detroit.
RADFORD, GEORGE W.,	Detroit.

MICHIGAN.—Continued.

ROBSON, FRANK E.,	Detroit.
RUSSELL, ALFRED,	Detroit.
RUSSELL, HENRY,	Detroit.
SLOMAN, ADOLPH,	Detroit.
SMITH, WILLIAM ALDEN,	Grand Rapids.
STEVENS, FREDERICK W.,	Detroit.
STONE, J. W.,	Marquette.
SWIFT, CHARLES M.,	Detroit.
TAGGART, EDWARD,	Grand Rapids.
WANTY, GEORGE P.,	Grand Rapids.
WEADOCK, THOMAS A. E.,	Detroit.
WEAVER, CLEMENT E.,	Adrian.
WETHERBEE, WILLIAM H.,	Detroit.
WHITE, PETER,	Marquette.
WHITTEMORE, JAMES,	Detroit.
WILSON, CHARLES M.,	Grand Rapids.
WOLF, GUSTAVE A.,	Grand Rapids.

MINNESOTA.

ALBERT, CHARLES S.,	Minneapolis.
BOUTTELLE, M. H.,	Minneapolis.
BROWN, FREDERICK V.,	Minneapolis.
BROWN, ROME G.,	Minneapolis.
CHRISMAN, CHARLES E.,	Ortonville.
COHEN, EMANUEL,	Minneapolis.
ELLIOTT, CHARLES B.,	Minneapolis.
FLANDRAU, CHARLES E.,	St. Paul.
HAHN, WILLIAM J.,	Minneapolis.
HALL, ALBERT H.,	Minneapolis.
KERR, WILLIAM A.,	Minneapolis.
LANCASTER, WILLIAM A.,	Minneapolis.
MASON, ALFRED F.,	St. Paul.
MERCER, HUGH V.,	Minneapolis.
PAIGE, JAMES,	Minneapolis.
PAUL, A. C.,	Minneapolis.
SANBORN, JOHN B.,	St. Paul.
STEVENS, HIRAM F.,	St. Paul.
TIGHE, AMBROSE,	St. Paul.
WEBBER, MARSHALL B.,	Winona.
WHELAN, RALPH,	Minneapolis.
YOUNG, GEORGE B.,	St. Paul.

MISSISSIPPI.

BOWERS, E. J.,	Bay St. Louis.
HOWBY, CHARLES B. (Washington, D. C.), . . .	Oxford.
MONTGOMERY, M. A.,	Oxford.
SOMERVILLE, THOMAS H.,	University.
THOMPSON, R. H.,	Jackson.

MISSOURI.

ABBOTT, A. L.,	St. Louis.
ALLEN, CHARLES CLAFLIN,	St. Louis.
ASHLEY, HENRY D.,	Kansas City.
BAKEWELL, PAUL,	St. Louis.
BALL, R. E.,	Kansas City.
BARCLAY, SHEPARD,	St. Louis.
BATES, CHARLES W.,	St. Louis.
BLAIR, ALBERT,	St. Louis.
BLAIR, JAMES L.,	St. Louis.
BOYLE, WILBUR F.,	St. Louis.
BRYAN, P. TAYLOR,	St. Louis.
CHARLES, BENJAMIN H.,	St. Louis.
CHRISTIE, HARVEY L.,	St. Louis.
CLARKE, ENOS,	St. Louis.
COCHRAN, ALEXANDER G.,	St. Louis.
CURTIS, WILLIAM S.,	St. Louis.
DEAN, O. H.,	Kansas City.
DOBSON, CHARLES L.,	Kansas City.
DONALDSON, WILLIAM R.,	St. Louis.
DOUGLAS, WALTER B.,	St. Louis.
EARLY, MARION C.,	St. Louis.
ELIOT, EDWARD C.,	St. Louis.
FINKELNBURG, G. A.,	St. Louis.
FISSE, WILLIAM E.,	St. Louis.
FOWLER, A. C.,	St. Louis.
GANTT, JAMES B.,	Jefferson City.
GIBSON, JAMES,	Kansas City.
HAGERMAN, FRANK,	Kansas City.
HAGERMAN, JAMES,	St. Louis.
HARKLESS, JAMES H.,	Kansas City.
HOLMES, DANIEL B.,	Kansas City.
HOPKINS, JAMES L.,	St. Louis.
JUDSON, FREDERICK N.,	St. Louis.
KARNES, J. V. C.,	Kansas City.
KEHR, EDWARD C.,	St. Louis.
KING, S. H.,	St. Louis.

MISSOURI.—Continued.

KLEIN, JACOB,	St. Louis.
LADD, SANFORD B.,	Kansas City.
LATHROP, GARDINER,	Kansas City.
LAWSON, JOHN D.,	Columbia.
LEHMAN, FRED. W.,	St. Louis.
LIONBERGER, ISAAC H.,	St. Louis.
MAJOR, SAMUEL C.,	Fayette.
MCKEIGHAN, JOHN E.,	St. Louis.
MCLEOD, W. D.,	Kansas City.
NAGEL, CHARLES,	St. Louis.
NEW, ALEXANDER,	Kansas City.
NOBLE, JOHN W.,	St. Louis.
OTTOFY, L. FRANK,	St. Louis.
PALMER, CLARENCE S.,	Kansas City.
PERRY, WILLIAM C.,	Kansas City.
PHILIPS, JOHN F.,	Kansas City.
PRATT, WALLACE,	Kansas City.
ROBERTSON, GEORGE,	Mexico.
ROBINSON, WALTOUR M.,	Jefferson City.
REYNOLDS, THOMAS H.,	Kansas City.
SEBREE, FRANK P.,	Kansas City.
SEBREE, GEORGE M.,	Springfield.
SHERWOOD, ADIEL,	St. Louis.
SPENCER, SELDEN P.,	St. Louis.
TAUSSIG, JAMES,	St. Louis.
THAYER, AMOS M.,	St. Louis.
THOMPSON, WILLIAM B.,	St. Louis.
TICHENOR, CHARLES O.,	Kansas City.
TITUS, FRANK,	Kansas City.
TRIMBLE, J. McD.,	Kansas City.
WARD, HUGH C.,	Kansas City.
WILFLEY, LEBBEUS R.,	St. Louis.
WITHROW, JAMES E.,	St. Louis.
WURDEMAN, G. A.,	St. Louis.

MONTANA.

COTTER, JOHN W.,	Butte.
DIXON, WILLIAM W.,	Butte.
SANDERS, JAMES U.,	Helena.
SANDERS, WILBUR F.,	Helena.
SCALLON, WILLIAM,	Butte.
SMITH, D. F.,	Kalispell.

NEBRASKA.

AMES, JOHN H.,	Lincoln.
BALDRIDGE, HOWARD H.,	Omaha.
BARTLETT, EDMUND M.,	Omaha.
BAXTER, IRVING F.,	Omaha.
BLACKBURN, THOMAS W.,	Omaha.
BRECKENRIDGE, RALPH W.,	Omaha.
BREEN, JOHN P.,	Omaha.
BROGAN, FRANCIS A.,	Omaha.
CORCORAN, GEORGE F.,	York.
COWIN, J. C.,	Omaha.
DEWEESE, J. W.,	Lincoln.
DUNDEY, CHARLES L.,	Omaha.
ELGUTTER, CHARLES S.,	Omaha.
GEISTHARDT, STEPHEN L.,	Lincoln.
GREENE, CHARLES J.,	Omaha.
GREENE, ROBERT J.,	Lincoln.
HAINER, EUGENE J.,	Aurora.
HALL, MATTHEW A.,	Omaha.
HARTIGAN, MICHEL A.,	Hastings.
HASTINGS, W. G.,	Wilbur.
HATFIELD, I. H.,	Lincoln.
KINKAID, M. P.,	O'Neill.
KRETSINGER, E. O.,	Beatrice.
LANGDON, MARTIN,	Omaha.
LETTON, CHARLES B.,	Fairbury.
MAHONEY, TIMOTHY J.,	Omaha.
MANDERSON, CHARLES F.,	Omaha.
MARTIN, FRANCIS,	Falls City.
MONTGOMERY, CARROLL S.,	Omaha.
MUNGER, W. H.,	Omaha.
MCCANDLESS, A. D.,	Wymore.
McHUGH, WILLIAM D.,	Omaha.
McINTOSH, JAMES H.,	Omaha.
OGDEN, CHARLES,	Omaha.
O'NEILL, HARRY E.,	Omaha.
PATRICK, WILLIAM R.,	Papillion.
POUND, ROSCOE,	Lincoln.
PROUT, F. N.,	Lincoln.
REAVIS, C. F.,	Falls City.
REESE, MANOAH B.,	Lincoln.
ROBBINS, C. A.,	Lincoln.
SHEEAN, JAMES B.,	Omaha.
SMITH, HOWARD B.,	Omaha.
SMYTH, CONSTANTINE J.,	Omaha.

NEBRASKA.—Continued.

THURSTON, JOHN M.,	Omaha.
WAKELEY, ARTHUR C.,	Omaha.
WAKELEY, ELEAZER,	Omaha.
WEST, JOEL W.,	Omaha.
WHITE, BENJAMIN T.,	Omaha.
WILSON, HENRY H.,	Lincoln.
WOODS, FRANK H.,	Lincoln.
WOOLLEY, JAMES H.,	Grand Island.
WOOLWORTH, JAMES M.,	Omaha.

NEW HAMPSHIRE

ALBIN, JOHN H.,	Concord.
BATCHELLOR, ALBERT S.,	Littleton.
BRANCH, OLIVER E.,	Manchester.
BURLEIGH, ALVIN,	Plymouth.
BURNHAM, HENRY E.,	Manchester.
BURNS, CHARLES H.,	Nashua.
CHASE, IRA A.,	Bristol.
COLBY, JAMES F.,	Hanover.
CROSS, DAVID,	Manchester.
EASTMAN, SAMUEL C.,	Concord.
FELLOWS, JOSEPH W.,	Manchester.
FRINK, J. S. H.,	Portsmouth.
STREETER, FRANK S.,	Concord.

NEW JERSEY.

APPLEGATE, JOHN S.,	Red Bank.
BERGEN, JAMES J.,	Somerville.
BOCHERLING, CHARLES,	Newark.
BUCHANAN, JAMES,	Trenton.
CLEVINGER, WILLIAM M.,	Atlantic City.
COLIE, EDWARD M.,	Newark.
DICKINSON, S. MEREDITH,	Trenton.
DUNN, MICHAEL,	Paterson.
ELY, JOHN J.,	Freehold.
EMERY, JOHN R.,	Morristown.
FORT, J. FRANKLIN,	Newark.
GABRETSON, A. Q.,	Morristown.
GOBLE, L. SPENCER,	Newark.
GOODELL, EDWIN B.,	Montclair.
GRANT, ALEXANDER, JR.,	Newark.
GREY, SAMUEL H.,	Camden.
GRIGGS, JOHN W.,	Paterson.

NEW JERSEY.—Continued.

HAMILL, HUGH H.,	Trenton.
HARDIN, JOHN R.,	Newark.
HARTSHORNE, CHARLES H.,	Jersey City.
HUTCHINSON, BARTON B.,	Trenton.
KEASEBEY, EDWARD Q.,	Newark.
LANNING, WILLIAM M.,	Trenton.
LYON, ADRIAN,	Perth Amboy.
MCCARTER, ROBERT H.,	Newark.
MCCARTER, THOMAS N.,	Newark.
PARKER, CORTLANDT,	Newark.
PARKER, FREDERICK,	Freehold.
PARKER, R. WAYNE,	Newark.
RIKER, ADRIAN,	Newark.
SHIPMAN, GEORGE M.,	Belvidere.
STRONG, ALAN H.,	New Brunswick.
SWAYZE, FRANCIS J.,	Newark.
TEBRELL, WILLIAM J.,	Burlington.
THOMPSON, JOSEPH,	Atlantic City.
VROOM, GARRET D. W.,	Trenton.
WILSON, WOODROW,	Princeton.
WOODRUFF, ROBERT S.,	Trenton.

NEW MEXICO.

CATRON, THOMAS B.,	Santa Fé.
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NEW YORK.

ABBOTT, EVERETT V.,	New York.
ALLEN, FREDERICK I.,	Auburn.
ASHLEY, CLARENCE D.,	New York.
AUB, THEODORE,	New York.
BACON, SELDEN,	New York.
BARTLETT, JOHN P.,	New York.
BELL, CLARK,	New York.
BENEDICT, ROBERT D.,	New York.
BINNEY, HAROLD,	New York.
BISCHOFF, HENRY, JR.,	New York.
BROWN, ADDISON,	New York.
BROWN, WILLIAM G.,	New York.
BRUNO, RICHARDS M.,	New York.
BUCHANAN, CHARLES J.,	Albany.
BURDICK, FRANCIS M.,	New York.
BURR, CHARLES L.,	New York.

NEW YORK.—Continued.

BUTLER, CHARLES HENRY,	New York.
BUTLER, WILLIAM ALLEN, JR.,	New York.
BUTTON, WILLIAM H.,	New York.
BYRNE, JAMES,	New York.
CALLAGHAN, ALEXANDER J. A.,	New York.
CARPENTER, JAMES E.,	New York.
CARTER, JAMES C.,	New York.
CARTER, WALTER S.,	New York.
CHASE, GEORGE,	New York.
CHOATE, JOSEPH H.,	New York.
CLARK, MARTIN,	Buffalo.
COCKRAN, W. BOURKE,	New York.
COLLIER, M. DWIGHT,	New York.
COOK, WILLIAM W.,	New York.
COUDERT, FREDERIC R., JR.,	New York.
COXE, H. C. (Paris, France),	New York.
CUNNEEN, JOHN,	Buffalo.
DANAHER, FRANKLIN M.,	Albany.
DAVIES, JULIAN T.,	New York.
DAVIES, WILLIAM GILBERT,	New York.
DAVIS, VERNON M.,	New York.
DAVISON, CHARLES M.,	Saratoga Springs.
DEERING, JAMES A.,	New York.
DENISON, HOWARD P.,	Syracuse.
DEPEW, CHAUNCEY M.,	New York.
DILLON, JOHN F.,	New York.
DOS PASSOS, JOHN R.,	New York.
DOTY, SPENCER C.,	New York.
DOUGHERTY, J. HAMPDEN,	New York.
DOYLE, LOUIS F.,	New York.
DUELL, CHARLES H.,	New York.
DUTTON, JOHN A.,	New York.
DYER, RICHARD N.,	New York.
ESTABROOK, HENRY D.,	New York.
EWING, HAMPTON D.,	Yonkers.
FEARONS, GEORGE H.,	New York.
FIELD, FRANK HARVEY,	Brooklyn.
FIERO, J. NEWTON,	Albany.
FITCH, THEODORE,	Yonkers.
FLEISCHMANN, SIMON,	Buffalo.
FORBES, FRANCIS,	New York.
FOSTER, ROGER,	New York.
FOX, AUSTEN G.,	New York.
FULLER, PAUL,	New York.

NEW YORK.—Continued.

GARDNER, JOHN M.,	New York.
GIBBS, CLINTON B.,	Buffalo.
GIFFORD, LIVINGSTON,	New York.
GILLEN, WILLIAM W.,	Jamaica.
GLEASON, JOHN H.,	Albany.
GOODELLE, WILLIAM P.,	Syracuse.
GORDON, JAMES LINDSAY,	New York.
GREELEY, WILLIAM B.,	New York.
GRINNELL, W. MORTON,	New York.
GUTHRIE, WILLIAM D.,	New York.
HALL, CHARLES J. G.,	New York.
HAWES, GILBERT RAY,	New York.
HAWKESWORTH, R. W.,	New York.
HEERMANCE, MARTIN,	Poughkeepsie.
HERENDEN, EDWARD G.,	Elmira.
HORNBLOWER, WILLIAM B.,	New York.
HOTCHKISS, WILLIAM HORACE,	Buffalo.
HUBBARD, HARRY,	New York.
HUBBARD, THOMAS H.,	New York.
HUFFCUT, E. W.,	Ithaca.
HUGHES, CHARLES E.,	New York.
HULL, GEORGE S.,	Buffalo.
INGALSBE, GRENVILLE M.,	Sandy Hill.
IRVINE, FRANK,	Ithaca.
ISAACS, M. S.,	New York.
JACOB, EPHRAIM A.,	New York.
JELLINEK, EDWARD L.,	Buffalo.
JOHNSTON, THOMAS J.,	New York.
JOLINE, ADRIAN H.,	New York.
JONES, W. MARTIN,	Rochester.
KEENER, WILLIAM A.,	New York.
KELLOGG, E. BARSTOW,	New York.
KELLOGG, L. LAFLIN,	New York.
KENYON, WILLIAM H.,	New York.
KIDDLE, ALFRED W.,	New York.
KILVERT, THOMAS,	New York.
KIRLIN, J. PARKER,	New York.
KLOCK, GEORGE S.,	Utica.
KNOX, CHARLES H.,	New York.
LAMBERTON, C. L.,	New York.
LEAVITT, JOHN BROOKS,	New York.
LEVIS, HOWARD C.,	Schenectady.
LEVY, JOSEPH L.,	New York.
LINDSAY, WILLIAM,	New York.

NEW YORK.—Continued.

LOGAN, WALTER S.,	New York.
MACFARLAND, W. W.,	New York.
MERCHANT, HENRY D.,	New York.
MEYERS, SIDNEY S.,	New York.
MILBURN, JOHN G.,	Buffalo.
MILLER, PEYTON F.,	Albany.
MILLER, W. W.,	New York.
MILNOR, M. CLEILAND,	New York.
MITCHELL, CHARLES E.,	New York.
MOORE, JOHN BASSETT,	New York.
MOOT, ADELBERT,	Buffalo.
MORSE, WALDO G.,	New York.
MOSES, RAPHAEL J.,	New York.
MYERS, NATHANIEL,	New York.
MCCALL, EDWARD E.,	New York.
MCCOOK, JOHN J.,	New York.
MCCRARY, A. J.,	Binghamton.
McKINNEY, WILLIAM M.,	Northport.
MCLEAN, DONALD,	New York.
McNULTY, WILLIAM D. (New York, N. Y.),	Saratoga Springs.
NICHOLS, GEORGE L.,	New York.
NICOLSON, JOHN, JR.,	New York.
NOBLE, DANIEL,	Long Island City.
OPDYKE, WILLIAM S.,	New York.
ORDRONAUX, JOHN,	New York.
OSGOOD, HOWARD L.,	Rochester.
PARKER, ALTON B.,	Kingston.
PARMENTER, ROSWELL A.,	Troy.
PARSONS, HINS DILL,	Schenectady.
PETTY, ROBERT D.,	New York.
PIERCE, WINSLOW S.,	New York.
POTTER, FREDERICK,	New York.
PRIME, RALPH E.,	Yonkers.
PUTNAM, HARRINGTON,	New York.
QUACKENBUSH, JAMES L.,	Buffalo.
REDDING, JOSEPH D.,	New York.
REDDING, WILLIAM A.,	New York.
REDFIELD, HENRY S.,	New York.
REEVES, ALFRED G.,	New York.
RICH, BURDETTE A.,	Rochester.
ROOT, ELIHU,	New York.
RUSSELL, ISAAC F.,	New York.
SCOTT, JAMES L.,	Saratoga Springs.
SEXTON, PLINY T.,	Palmyra.

NEW YORK.—Continued.

SEYMOUR, HENRY H.,	Buffalo.
SHACK, FERDINAND,	New York.
SMITH, NELSON,	New York.
SPEIR, GILBERT M.,	New York.
STETSON, FRANCIS LYNDE,	New York.
STILLMAN, THOMAS E.,	New York.
SUMERWELL, E. K.,	New York.
SUMNER, EDWARD A.,	New York.
TAGGART, RUSH,	New York.
TAYLOR, JOHN D.,	New York.
THOMPSON, SEYMOUR D.,	New York.
TOMPKINS, HAMILTON B.,	New York.
TREMAIN, HENRY E.,	New York.
TURNER, HERBERT B.,	New York.
VANAMEE, WILLIAM,	Newburgh.
VAN SLYCK, GEORGE F.,	New York.
VAN SLYCK, GEORGE W.,	New York.
VAN VECHTEN, A. V. W.,	New York.
VIEU, HENRY A.,	New York.
VILLARD, HAROLD G.,	New York.
WADHAMS, FREDERICK E.,	Albany.
WALKER, ALBERT H.,	New York.
WARD, HAMILTON,	Buffalo.
WARD, HENRY GALBRAITH,	New York.
WARNER, GEORGE COFFING,	New York.
WARNER, JOHN DEWITT,	New York.
WEEKS, WILLIAM R.,	New York.
WETMORE, EDMUND,	New York.
WHEELER, EVERETT P.,	New York.
WHITNEY, EDWARD B.,	New York.
WHITTAKER, EGBERT,	Saugerties.
WILCOX, ANSLEY,	Buffalo.
WILLCOX, DAVID,	New York.
WING, HENRY T.,	New York.
WISE, JOHN S.,	New York.
WOLLMAN, HENRY,	New York.
WOODRUFF, EDWIN H.,	Ithaca.
WOODWARD, FREDERICK C.,	Middleton.

NORTH CAROLINA.

ANDREWS, ALEXANDER BOYD, JR.,	Raleigh.
BIGGS, J. CRAWFORD,	Durham.
BRIDGERS, JOHN L.,	Tarboro.
BUSBEE, FABIVS H.,	Raleigh.

NORTH CAROLINA.—Continued.

BUXTON, J. C.,	Winston.
CLEMENT, L. H.,	Salisbury.
HILL, THOMAS N.,	Halifax.
PATTERSON, LINDSAY,	Winston.
PRUDEN, WILLIAM D.,	Edenton.
WALKER, P. D.,	Charlotte.

NORTH DAKOTA.

AUSTIN, JAMES M.,	Ellendale.
BOSARD, JAMES H.,	Grand Forks.
BRUCE, ANDREW A.,	Grand Forks.
SPALDING, BURLEIGH FOLSOM,	Fargo.
THOMAS, W. H.,	Leeds.

OHIO.

ANDERSON, JAMES H.,	Columbus.
BLACKFORD, AARON,	Findlay.
BOWLER, ROBERT B.,	Cincinnati.
BURKET, HARLAN F.,	Findlay.
BURKET, JACOB F.,	Findlay.
BUSHNELL, T. H.,	Cleveland.
CADWELL, JAMES P.,	Jefferson.
CALHOUN, PAT.,	Cleveland.
CARR, WILLIAM F.,	Cleveland.
CLARKE, JOHN H.,	Cleveland.
CLEVELAND, HARLAN,	Cincinnati.
COLLINS, JAMES H.,	Columbus.
COLSTON, EDWARD,	Cincinnati.
COOK, E. S.,	Cleveland.
CUSHING, WILLIAM E.,	Cleveland.
DAY, WILLIAM R.,	Canton.
DEMPSEY, JAMES H.,	Cleveland.
DICKMAN, FRANKLIN J.,	Cleveland.
DOYLE, JOHN H.,	Toledo.
DURBAN, FRANK A.,	Zanesville.
FERGUSON, E. A.,	Cincinnati.
FERRIS, AARON A.,	Cincinnati.
FOLLETT, ALFRED DEWEY,	Marietta.
FOLLETT, MARTIN DEWEY,	Marietta.
FULLER, CLIFFORD W.,	Cleveland.
GARFIELD, HARRY A.,	Cleveland.
GARFIELD, JAMES R.,	Cleveland.
GEDDES, FREDERICK L.,	Toledo.

OHIO.—Continued.

GOFF, FREDERICK H.,	Cleveland.
GOULDER, HARVEY D.,	Cleveland.
GRANGER, MOSES M.,	Zanesville.
GUNCKEL, LEWIS B.,	Dayton.
HADDEN, ALEXANDER,	Cleveland.
HARMON, JUDSON,	Cincinnati.
HARPER, JACOB CHANDLER,	Cincinnati.
HARRIS, STEPHEN R.,	Bucyrus.
HARRISON, RICHARD A.,	Columbus.
HENDERSON, JOHN M.,	Cleveland.
HEPBURN, CHARLES M.,	Cincinnati.
HINES, CLARK B.,	Bellville.
HODLEY, GEORGE, JR.,	Cincinnati.
HOLLISTER, THOMAS,	Cincinnati.
HOPKINS, E. H.,	Cleveland.
HOWLAND, PAUL,	Cleveland.
HOYT, JAMES H.,	Cleveland.
HUNT, CHARLES J.,	Cincinnati.
HUNT, SAMUEL F.,	Cincinnati.
JACKSON, WILLIAM H.,	Cincinnati.
JAHN, CARL G.,	Columbus.
JAMES, FRANCIS B.,	Cincinnati.
JELKE, FERDINAND, JR.,	Cincinnati.
JOHNSON, HOMER H.,	Cleveland.
JOHNSON, SIMEON M.,	Cincinnati.
JONES, ASAH EL W.,	Youngstown.
JONES, JAMES M.,	Cleveland.
JONES, RANKIN D.,	Cincinnati.
JOSEPH, EMIL,	Cleveland.
KENNON, NEWELL K.,	St. Clairsville.
KLINE, VIRGIL P.,	Cleveland.
LAWRENCE, JAMES,	Cleveland.
LEWENTHAL, A.,	Cleveland.
MATTHEWS, C. BENTLEY,	Cincinnati.
MAXWELL, LAWRENCE, JR.,	Cincinnati.
MCMAHON, J. SPRIGG,	Dayton.
NORRIS, MYRON A.,	Youngstown.
PARKER, ROBERT S.,	Toledo.
PATTERSON, M. R.,	Columbus.
QUAIL, FRANK A.,	Cleveland.
RANNEY, HENRY C.,	Cleveland.
ROBERTSON, C. D.,	Cincinnati.
SALTZGABER, GAYLARD M.,	Van Wert.
SANDERS, W. B.,	Cleveland.

OHIO.—Continued.

SAYLER, JOHN RYNER,	Cincinnati.
SENEY, HENRY W.,	Toledo.
SMITH, ALEXANDER L.,	Toledo.
SMITH, RUFUS B.,	Cincinnati.
SQUIRE, ANDREW,	Cleveland.
STEWART, GILBERT H.,	Columbus.
STOEHR, OSCAR,	Cincinnati.
STRONG, EDWARD W.,	Cincinnati.
SWAYNE, FRANCIS B. (New York, N. Y.),	Toledo.
TAFT, WILLIAM H.,	Cincinnati.
TALCOTT, WILLIAM E.,	Cleveland.
TOLLES, SHIRLEY H.,	Cleveland.
TROUP, JAMES O.,	Bowling Green.
WARRINGTON, JOHN W.,	Cincinnati.
WHEELER, SETH S.,	Lima.
WILLIAMSON, SAMUEL E.,	Cleveland.
WORTHINGTON, WILLIAM,	Cincinnati.
YOUNG, GEORGE R.,	Dayton.

OKLAHOMA TERRITORY.

ASP, HENRY E.,	Guthrie.
HAINER, BAYARD T.,	Perry.

OREGON.

BEAN, R. S.,	Salem.
CAREY, CHARLES H.,	Portland.
HOLMAN, FREDERICK V.,	Portland.
MOORE, F. A.,	Salem.
SCHNABEL, CHARLES J.,	Portland.

PENNSYLVANIA.

ANDRE, JOHN K.,	Philadelphia.
ASHHURST, RICHARD L.,	Philadelphia.
BAER, GEORGE F.,	Reading.
BAYARD, JAMES WILSON,	Philadelphia.
BECK, JAMES M.,	Philadelphia.
BEDFORD, J. CLAUDE,	Philadelphia.
BEEBER, DIMNER,	Philadelphia.
BERTOLETTE, FREDERICK,	Mauch Chunk.
BISPHAM, GEORGE TUCKER,	Philadelphia.
BRIGHTLY, F. F.,	Philadelphia.
BROWN, FRANCIS SHUNK,	Philadelphia.

PENNSYLVANIA.—Continued.

BROWN, J. HAY,	Lancaster.
BROWN, JOHN A.,	Philadelphia.
BROWN, JOHN DOUGLASS, JR.,	Philadelphia.
BUCHER, JOSEPH C.,	Lewisburg.
BUDD, HENRY,	Philadelphia.
BURNETT, WILLIAM H.,	Philadelphia.
CARSON, HAMPTON L.,	Philadelphia.
CHAMBERS, FRANCIS T.,	Philadelphia.
CHRISTY, GEORGE H.,	Pittsburg.
CUYLER, THOMAS DEWITT,	Philadelphia.
DALE, RICHARD C.,	Philadelphia.
DANA, SAMUEL W.,	New Castle.
DICKSON, SAMUEL,	Philadelphia.
DUANE, RUSSELL,	Philadelphia.
FARQUHAR, GUY E.,	Pottsville.
FENTON, HECTOR T.,	Philadelphia.
FISHER, WILLIAM RIGHTER,	Philadelphia.
FOX, E. J.,	Easton.
FRALEY, JOSEPH C.,	Philadelphia.
GEYELIN, HENRY LAUSSAT,	Philadelphia.
GILBERT, LYMAN D.,	Harrisburg.
GIVEN, WILLIAM P.,	Columbia.
GRAHAM, GEORGE S.,	Philadelphia.
GREEN, BENJAMIN W.,	Emporium.
GRIFFITH, WARREN G.,	Philadelphia.
GUTHRIE, GEORGE W.,	Pittsburg.
HALL, WILLIAM M., JR.,	Pittsburg.
HAMMOND, W. S.,	Altoona.
HARGEST, WILLIAM M.,	Harrisburg.
HARRITY, WILLIAM F.,	Philadelphia.
HEMPHILL, JOSEPH,	West Chester.
HENSEL, W. U.,	Lancaster.
HIESTER, ISAAC,	Reading.
HOWSON, CHARLES,	Philadelphia.
HUNTER, ERNEST HOWARD,	Philadelphia.
JAYNE, H. LABARRE,	Philadelphia.
JONES, J. LEVERING,	Philadelphia.
JONES, RICHMOND L.,	Reading.
KAY, JAMES I.,	Pittsburg.
KEATOR, JOHN F.,	Philadelphia.
KNOX, P. C.,	Pittsburg.
KULP, GEORGE B.,	Wilkesbarre.
LANDIS, CHARLES J.,	Lancaster.
LEAR, HENRY,	Doylestown.

PENNSYLVANIA.—Continued.

LENAHAN, JOHN T.,	Wilkesbarre.
LEWIS, FRANCIS D.,	Philadelphia.
LEWIS, W. DRAPER,	Philadelphia.
LINDSEY, EDWARD,	Warren.
LIVINGOOD, FRANK S.,	Reading.
MACVEAGH, WAYNE,	Philadelphia.
MAFFETT, JAMES T.,	Clarion.
MARTIN, J. WILLIS,	Philadelphia.
MERCER, GEORGE GLUYAS,	Philadelphia.
MERCUR, RODNEY A.,	Towanda.
MERVINE, NICHOLAS P.,	Altoona.
MESTREZAT, S. LESLIE,	Uniontown.
MILLER, E. SPENCER,	Philadelphia.
MILLER, N. DUBOIS,	Philadelphia.
MORGAN, CHARLES E., JR.,	Philadelphia.
MORGAN, RANDAL,	Philadelphia.
MUHLENBERG, HENRY A.,	Reading.
MULLIN, EUGENE,	Bradford City.
MUNSON, C. LARUE,	Williamsport.
MCCCLINTOCK, ANDREW H.,	Wilkesbarre.
MCCCLUNG, WM. H.,	Pittsburg.
MCCCLURE, HARROLD M.,	Lewisburg.
NICHOLS, H. S. P.,	Philadelphia.
NILES, HENRY C.,	York.
NORTH, E. D.,	Lancaster.
NORTH, HUGH M.,	Columbia.
PALMER, HENRY W.,	Wilkesbarre.
PATTERSON, GEORGE S.,	Philadelphia.
PATTERSON, ROSWELL H.,	Scranton.
PATTERSON, T. ELLIOTT,	Philadelphia.
PATTERSON, THOMAS,	Pittsburg.
PEALE, S. R.,	Lock Haven.
PENNYPACKER, CHARLES H.,	West Chester.
PENNYPACKER, SAMUEL W.,	Philadelphia.
PEPPER, GEORGE WHARTON,	Philadelphia.
PERKINS, SAMUEL C.,	Philadelphia.
PETTIT, HORACE,	Philadelphia.
PRICHARD, FRANK P.,	Philadelphia.
RAWLE, FRANCIS,	Philadelphia.
REARDON, JOHN J.,	Williamsport.
RICE, WILLIAM E.,	Warren.
RYON, WILLIAM W.,	Shamokin.
SEIBERT, WILLIAM N.,	New Bloomfield.
SHAPLEY, RUFUS E.,	Philadelphia.

PENNSYLVANIA.—Continued.

SHIELDS, J. M.,	Pittsburg.
SHIRAS, GEORGE, JR.,	Pittsburg.
SIMPSON, ALEXANDER, JR.,	Philadelphia.
SMEAD, A. D. B.,	Carlisle.
SMITH, ALFRED PERCIVAL,	Philadelphia.
SMITH, WALTER GEORGE,	Philadelphia.
SNARE, JACOB,	Philadelphia.
STAAKE, WILLIAM H.,	Philadelphia.
STEELE, HENRY J.,	Easton.
STERRETT, JAMES R.,	Pittsburg.
STEWART, W. F. BAY,	York.
STILLWELL, JAMES C.,	Philadelphia.
STOEVER, WILLIAM C.,	Philadelphia.
STOUGHTON, A. B.,	Philadelphia.
STRAWBRIDGE, WILLIAM C.,	Philadelphia.
SULZBERGER, MAYER,	Philadelphia.
SWAIN, CHARLES M.,	Philadelphia.
SYNNESTVEDT, PAUL,	Pittsburg.
TAYLOR, JOSEPH T.,	Philadelphia.
TODD, M. HAMPTON,	Philadelphia.
TOWNSEND, CHARLES C.,	Philadelphia.
TRICKETT, WILLIAM,	Carlisle.
VON MOSCHIZER, ROBERT,	Philadelphia.
WAY, WILLIAM A.,	Pittsburg.
WALKER, ROBERT J. C.,	Philadelphia.
WALTON, HENRY F.,	Philadelphia.
WATSON, D. T.,	Pittsburg.
WATTERSON, A. V. D.,	Pittsburg.
WEAVER, JOHN,	Philadelphia.
WEIL, A. LEO,	Pittsburg.
WEISER, J. G.,	Middleburg.
WILCOX, WILLIAM A.,	Scranton.
WILLARD, EDWARD N.,	Scranton.
WINDLE, WILLIAM S.,	West Chester.
WINTERNITZ, BENJAMIN A.,	New Castle.
WISE, JESSE H.,	Pittsburg.
WOLVERTON, SIMON P.,	Sunbury.
WORK, JAMES C.,	Uniontown.

PHILIPPINE ISLANDS.

YANCEY, DAVID WALKER,	Lucena, Tayabas.
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RHODE ISLAND.

ANGELL, WALTER F.,	Providence.
BAKER, ALBERT A.,	Providence.

RHODE ISLAND.—Continued.

BAKER, DARIUS,	Newport.
CURTIS, HARRY C.,	Providence.
EATON, AMASA M.,	Providence.
HOGAN, JOHN W.,	Providence.
JENCKES, THOMAS A.,	Providence.
LITTLEFIELD, NATHAN W.,	Pawtucket.
MILLER, AUGUSTUS S.,	Providence.
POTTER, DEXTER B.,	Providence.
STEARNS, CHARLES F.,	Providence.
STINES, JOHN H.,	Providence.
THURSTON, WILMARTH H.,	Providence.
TILLINGHAST, JAMES,	Providence.
WOODS, JOHN CARTER BROWN,	Providence.

SOUTH CAROLINA.

BUIST, GEORGE LAMB,	Charleston.
BUIST, HENRY,	Charleston.
MOORE, M. HERNDON,	Columbia.
MORDECAI, T. MOULTRIE,	Charleston.
SMYTHE, AUGUSTINE T.,	Charleston.
WOODS, CHARLES A.,	Marion.
YOUNG, HENRY E.,	Charleston.

SOUTH DAKOTA.

AIKENS, FRANK R.,	Sioux Falls.
BAILEY, CHARLES O.,	Sioux Falls.
CRAWFORD, COE I.,	Huron.
GOODNER, IVAN W.,	Pierre.
TRIPP, BARTLETT,	Yankton.
VOORHEES, JOHN H.,	Sioux Falls.
WELLS, ROLLIN J.,	Sioux Falls.

TENNESSEE.

BAXTER, ED.,	Nashville.
BAXTER, E. J.,	Jonesboro.
BONNER, J. W.,	Nashville.
CAMP, E. C.,	Knoxville.
CAMPBELL, LEMUEL R.,	Nashville.
CARROLL, WILLIAM H.,	Memphis.
COOPER, EDMUND,	Shelbyville.
HEISKELL, F. H.,	Memphis.
INGERSOLL, HENRY H.,	Knoxville.
JACKSON, ROBERT F.,	Nashville.

TENNESSEE.—Continued.

LEA, OVERTON,	Nashville.
MALONE, JAMES H.,	Memphis.
MALONE, THOS. H.,	Nashville.
PILCHER, JAMES S.,	Nashville.
RAMAGE, B. J.,	Sewanee.
ROSEBROUGH, W. S.,	Memphis.
SANFORD, EDWARD T.,	Knoxville.
SWANEY, W. B.,	Chattanooga.
TILLMAN, A. M.,	Nashville.
VAN DEVENTER, HORACE,	Knoxville.
VERTREES, J. J.,	Nashville.
YOUNG, DAVID K.,	Clinton.

TEXAS.

ALEXANDER, L. C.,	Waco.
AUTRY, JAMES L.,	Corsicana.
BURGES, WILLIAM H.,	El Paso.
CARLOCK, R. L.,	Fort Worth.
COKE, HENRY C.,	Dallas.
DILLARD, F. C.,	Sherman.
DUFF, R. C.,	Beaumont.
EDWARDS, PEYTON F.,	El Paso.
GAINES, R. R.,	Austin.
GOULD, GEORGE H.,	Palestine.
KEMP, WYNDHAM,	El Paso.
LINDSLEY, PHILIP,	Dallas.
MILLER, T. S.,	Dallas.
PARKER, JOHN W.,	Taylor.
PHILLIPS, NELSON,	Hillsboro.
SAMUELS, SIDNEY L.,	Fort Worth.
SMITH, ROBERT WAVERLEY,	Galveston.
SPOONTS, M. A.,	Fort Worth.
TERRY, J. W.,	Galveston.
WALTHALL, A. M.,	El Paso.
WEST, ROBERT G.,	Austin.

UTAH.

CRITCHLOW, EDWARD B.,	Salt Lake City.
KINNEY, CLESSON S.,	Salt Lake City.
SHEPARD, RICHARD B.,	Salt Lake City.
VARIAN, CHARLES S.,	Salt Lake City.
WILLIAMS, P. L.,	Salt Lake City.

VERMONT.

BARBER, O. M.,	Bennington, Vt.
BUTTON, FREDERICK H.,	Rutland.
McCULLOUGH, JOHN G.,	No. Bennington.
TAFT, ELIHU B.,	Burlington.

VIRGINIA.

ANDERSON, WILLIAM A.,	Lexington.
BRYAN, GEORGE,	Richmond.
CABELL, JAMES ALSTON,	Richmond.
CATON, JAMES R.,	Alexandria.
COCKE, LUCIAN H.,	Roanoke.
COKE, JOHN A.,	Richmond.
GARNETT, THEODORE S.,	Norfolk.
GILLIAM, MARSHALL M.,	Richmond.
GILMORE, JAMES H.,	Marion.
GLASGOW, WILLIAM A., JR.,	Roanoke.
GRAVES, CHARLES A.,	Charlottesville.
GREGORY, ROGER,	Richmond.
GRIFFIN, S.,	Bedford City.
GRINNAN, DANIEL,	Richmond.
GUY, JACKSON,	Richmond.
HAMILTON, ALEXANDER,	Petersburg.
HATTON, GOODRICH,	Portsmouth.
HUGHES, ROBERT M.,	Norfolk.
LEWIS, LUNSFORD L.,	Richmond.
MINOR, RALEIGH COLSTON,	Charlottesville.
MUNFORD, BEVERLEY B.,	Richmond.
PAGE, ROSEWELL,	Richmond.
PATTESON, S. S. P.,	Richmond.
PICKRELL, JOHN,	Richmond.
PRENTIS, ROBERT R.,	Suffolk.
ROBERTSON, WILLIAM GORDON,	Roanoke.
SEATON, EMMETT,	Richmond.
SMITH, WILLIS B.,	Richmond.
TENNANT, W. B.,	Richmond.
THOM, ALFRED P.,	Norfolk.
THOMASON, E. B.,	Richmond.
TOWNES, WILLIAM A.,	Richmond.
TUCKER, HENRY ST. GEORGE,	Lexington.
WATTS, LEIGH R.,	Portsmouth.
WILLIAMS, CHARLES U.,	Richmond.
WILLIAMS, E. RANDOLPH,	Richmond.

WASHINGTON.

FORSTER, GEORGE M.,	Spokane.
HANFORD, C. H.,	Seattle.
HUGHES, E. C.,	Seattle.
SHEPARD, CHARLES E.,	Seattle.

WEST VIRGINIA.

AMBLER, B. MASON,	Parkersburg.
ARCHER, V. B.,	Parkersburg.
HIGGINBOTHAM, C. C.,	Buckhannon.
HUBBARD, WILLIAM P.,	Wheeling.
HUTCHINSON, JOHN F.,	Parkersburg.
MERRICK, CHARLES D.,	Parkersburg.
PRICE, GEORGE E.,	Charleston.
SMITH, HARVEY F.,	Clarksburg.
TURNER, SMITH D.,	Parkersburg.
VAN WINKLE, W. W.,	Parkersburg.

WISCONSIN.

BARBER, CHARLES,	Oshkosh.
BARBER, F. J.,	Oshkosh.
BARNES, LYMAN E.,	Appleton.
BARTLETT, WILLIAM PITT,	Eau Claire.
BASHFORD, R. M.,	Madison.
BURKE, JOHN F.,	Milwaukee.
BURNELL, GEORGE W.,	Oshkosh.
CARY, ALFRED L.,	Milwaukee.
FAIRCHILD, H. O.,	Green Bay.
FLANDERS, JAMES G.,	Milwaukee.
FROST, EDWARD W.,	Milwaukee.
GILSON, N. S.,	Fond du Lac.
GRACE, H. H.,	West Superior.
GREENE, GEORGE G.,	Green Bay.
HANSEN, OTTO R.,	Milwaukee.
HUNTER, CHARLES F.,	Milwaukee.
JEFFRIS, MALCOLM G.,	Janesville.
JENKINS, JAMES G.,	Milwaukee.
JONES, BURR W.,	Madison.
KERWIN, J. C.,	Neenah.
LEWIS, H. M.,	Madison.
LUDWIG, JOHN C.,	Milwaukee.
MILLER, B. K.,	Milwaukee.
MILLER, GEORGE P.,	Milwaukee.

WISCONSIN.—Continued.

MORRIS, HOWARD,	Milwaukee.
OGDEN, LEWIS M.,	Milwaukee.
ORTON, PHILO A.,	Darlington.
PERELES, JAMES M.,	Milwaukee.
PERELES, THOMAS JEFFERSON,	Milwaukee.
QUARLES, CHARLES,	Milwaukee.
QUARLES, JOSEPH V.,	Milwaukee.
SEAMAN, WILLIAM H.,	Sheboygan.
SIEBECKER, ROBERT G.,	Madison.
SMITH, HOWARD L.,	Madison.
SPOONER, CHARLES P.,	Milwaukee.
SPOONER, JOHN C.,	Madison.
STAFFORD, W. H.,	Chippewa Falls
STARK, JOSHUA,	Milwaukee.
STEVENS, BREEZE J.,	Madison.
TENNEY, DANIEL K.,	Madison.
THOMPSON, A. E.,	Oshkosh
TURNER, W. J.,	Milwaukee.
VAN DYKE, GEORGE D.,	Milwaukee.
VAN DYKE, WILLIAM D.,	Milwaukee.
VILAS, EDWARD P.,	Milwaukee.
WEBSTER, W. H.,	Oconto.
WIGMAN, J. H. M.,	Green Bay.
WINKLER, FREDERICK C.,	Milwaukee.

WYOMING.

ARNOLD, CONSTANTINE P.,	Laramie.
BROWN, MELVILLE C. (Juneau, Alaska),	Laramie.
BURDICK, CHARLES W.,	Cheyenne.
BURKE, TIMOTHY F.,	Cheyenne.
CLARK, GIBSON,	Cheyenne.
CORN, SAMUEL T.,	Cheyenne.
CORTHELL, NELLIS E.,	Laramie.
KNIGHT, JESSE,	Cheyenne
LACEY, JOHN W.,	Cheyenne.
POTTER, CHARLES N.,	Cheyenne.
RINER, JOHN A.,	Cheyenne.
VAN DEVANTER, WILLIS (Washington, D. C.),	Cheyenne.
VAN ORSDEL, JOSIAH A.,	Cheyenne.

RECAPITULATION.

STATES.	NO. OF MEMBERS.	STATES.	NO. OF MEMBERS.
Alabama,	7	Nebraska,	53
Alaska Territory,	3	New Hampshire,	13
Arizona,	6	New Jersey,	38
Arkansas,	17	New Mexico,	1
California,	18	New York,	186
Colorado,	115	North Carolina,	10
Connecticut,	42	North Dakota,	5
Delaware,	11	Ohio,	90
District of Columbia,	61	Oklahoma Territory,	2
Florida,	12	Oregon,	5
Georgia,	42	Pennsylvania,	137
Idaho,	3	Philippine Islands,	1
Illinois,	115	Rhode Island,	15
Indian Territory,	3	South Carolina,	7
Indiana,	64	South Dakota,	7
Iowa,	40	Tennessee,	22
Kansas,	13	Texas,	21
Kentucky,	26	Utah Territory,	5
Louisiana,	22	Vermont,	4
Maine,	22	Virginia,	36
Maryland,	65	Washington,	4
Massachusetts,	106	West Virginia,	10
Michigan,	69	Wisconsin,	48
Minnesota,	22	Wyoming,	13
Mississippi,	5		
Missouri,	70		
Montana,	6		
		Total,	1,718

APPENDIX.

ADDRESS OF THE PRESIDENT,

U. M. ROSE,

OF LITTLE ROCK, ARKANSAS.

Gentlemen of the American Bar Association :

Painful thoughts obtrude themselves at each annual meeting as we miss familiar faces at our council board ; faces that we shall see no more. This is not the time to call the roll of those who have departed within the last year, or to commemorate their lives. That duty, entrusted to other hands, will be performed in such manner as will do justice to their merits, and will preserve their claims to honored and affectionate remembrance. But I must pause to mention, however briefly, two illustrious names now inseparably connected with our Association ; names that lent distinction to the proceedings of former years.

Henry Hitchcock was president of the American Bar Association for the year ending with the summer of 1890. A graduate of the University of Nashville and of Yale College, when he began the study of the law in the city of New York he was amply qualified, both by natural talents and acquired habits of mental discipline, for the field upon which he was to attain to conspicuous leadership. During the time that we knew him he was not only a successful practitioner, but also a profound jurist, thoroughly read in the law, and well versed in other departments of knowledge. His reading was varied ; and by extensive travel he had made himself acquainted with institutions and customs of other lands. He was at all times a close and discriminating observer of men and of passing events. He was keenly alive to everything that concerned the honor, dignity and usefulness of the profession to which he belonged. He took an active interest in the American Bar Association ; and was an acknowledged leader in many of the most important

discussions that have animated our sessions. In these respects he came up to the ideal of Lord Bacon, who said: "I hold every man a debtor to his profession; from the which, as men, of course, do seek to receive countenance and profit, so ought they of duty to endeavour themselves by way of amends to be a help and an ornament thereunto."

Mr. Hitchcock died at his home in St. Louis on the 18th day of March, 1902, universally honored and respected.

William McKinley manifested his interest in our Association by becoming a member in 1897; a connection which he maintained until his death. The exacting nature of his official duties deprived him of the opportunity of regular attendance at our meetings; but his sympathy with the work in which we are engaged never languished. You will recall that he was present at our meeting held in Cleveland some years ago; and that he made a speech at the banquet given after the meeting had closed.

President McKinley's name is indelibly inscribed on the pages of the history of his country; and as his character and the events of his life are well-known to all of you, I shall not dwell on them here. Since our last meeting he was made the victim of an assassination as cruel, as wicked and as heartless as any ever recorded; committed under the most exasperating circumstances, at a time and place dedicated to the arts of peace, in the presence of a large concourse of happy and contented people, by a man who had probably never seen him before, who had no cause of personal ill-will against him, and just as the President was extending his hand in token of friendly greeting. No crime could be more dastardly or more unprovoked.

No one could attain the high position to which President McKinley was elevated without severe and searching criticism of his political opinions; but it will be universally conceded that his character was singularly free from qualities that excite personal hostility or animosity. The crime acquired a deeper dye from the motives by which it was inspired. It was the

result of a monstrous propaganda for the total overthrow of law and order, the inauguration of a universal carnival of spoliation, and the successful revolt of every species of villainy ; a movement promoted and sanctioned by a considerable number of outlaws scattered throughout the civilized world.

The almost incredible iniquity of the bands who cultivate the art of political assassination, who seek to invert the whole moral scheme of the universe, saying, with the arch-fiend, "Evil be thou my good," aspiring to crimes that not only darken homes and fill the hearts of families and friends with sorrow and mourning, but which also plunge whole communities into grief and distress, is only equalled by the folly and madness of their hopes. Their avowed purpose is to re-enact the scenes of the French Revolution of 1789, with all of its attendant horrors ; but with our present means of instantaneous transmission of intelligence and rapid transportation, it is quite as impossible to reproduce that revolution as it would be to revive the Crusades. An effort was made by the Commune in Paris in 1871 to perform a similar feat, under such favorable circumstances as can rarely occur again ; when the government of France had been demolished, when her armies had been destroyed and captured, when a hostile force occupied a large part of her territory, when all means of communication were greatly interrupted, when the last policeman had been killed or had been driven from his beat ; and yet in a short time the movement was extinguished in blood, and its leaders expiated their crimes by death, in prison or in exile. Since the era of 1789 many additional means for the suppression of anarchy have been supplied ; the world has had fair warning of what to expect when attacks are made on the public peace ; and public affairs are no longer in the hands of a decayed nobility whose only resource in the hour of danger was to run away, and of a king who could not even do that.

The prompt execution of the assassin of President McKinley failed to satisfy the just demands of the violated law. Everyone knew that the murderer was only a wretched

decadent, a mere tool in the hands of conspirators, plotting an endless series of similar outrages in secret meetings and by clandestine correspondence kept up in many lands. A singular feature of the situation is that though the consultations looking to the commission of specific crimes are shrouded in concealment, yet the general purpose to commit crimes of the kind, so as to dry up the very fountains of law and order, is openly proclaimed in a literature of no small bulk or insignificant pretensions, which is disseminated freely through the mails for the purpose of debauching the minds of the ignorant, the weak, and such as are criminally inclined. Public meetings are held in our cities, where speeches of the most incendiary character are made by refugees from foreign lands, felons and escaped convicts who have served for some term of imprisonment, openly denouncing the government and laws of the country beneath whose protection they have sought shelter. Statutes looking to the suppression of this evil have been passed, as we shall presently see.

The constitution of our Association requires, as you know, that the "President shall open each annual meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several states and by Congress during the preceding year."

This is a task of no small magnitude, involving an examination of several thousand pages of extremely miscellaneous statutes; and it must be performed under great stress of time, as most of them are printed only shortly before our annual meetings. Making the best selection that my opportunities and abilities would permit, I have attempted to classify them, except in the case of federal statutes and also that of the statutes of Porto Rico, which, on account of the peculiar circumstances pertaining to that isolated community, I have reserved for separate treatment.

In those states where there are no general laws for the creation of municipal and other corporations, the time of the

legislatures is much occupied with legislation of that sort. In Georgia, at the last session of the legislature, about 125 acts of that kind were passed, covering 768 printed pages. In Maryland the total of the acts extend to 1000 pages, in New Jersey to 800 pages and in New York to 1800 pages.

CONSTITUTIONAL LAW.

It would seem that the plan of having legislative sessions only once in four years in Mississippi has not proved altogether satisfactory, as a constitutional amendment is now submitted providing for biennial sessions. Nevertheless, the new constitution of Alabama provides for quadrennial sessions.

Virginia has adopted a new constitution, of which the most noteworthy provisions seem to be as follows:

All judges are elected by the General Assembly.

In civil cases, cognizable before justices of the peace, the jury may be limited to five in number; in other courts they may be limited to seven.

The following are the provisions relating to the franchise:

“Section 18. Every male citizen of the United States, twenty-one years of age, who has been a resident of the state two years, of the county, city or town one year, and of the precinct in which he offers to vote thirty days next preceding the election in which he offers to vote, has been registered, and has paid his state poll taxes as hereinafter required, shall be entitled to vote for members of the General Assembly and all officers elective by the people; but removal from one precinct to another, in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days after such removal.

“Section 19. There shall be general registrations in the counties, cities and towns of the state during the years nineteen hundred and two and nineteen hundred and three at such times and in such manner as may be prescribed by an ordinance of this convention. At such registrations every male

citizen of the United States having the qualifications of age and residence required in section eighteen shall be entitled to register, if he be :

“First. A person who, prior to the adoption of this constitution, served in time of war in the army or navy of the United States, of the Confederate States or of any state of the United States or of the Confederate States ; or,

“Second. A son of any such person ; or,

“Third. A person, who owns property, upon which, for the year next preceding that in which he offers to register, state taxes aggregating at least one dollar have been paid ; or,

“Fourth. A person able to read any section of this constitution submitted to him by the officers of registration, and to give a reasonable explanation of the same ; or, if unable to read such section, able to understand and give a reasonable explanation thereof when read to him by the officers.

“A roll containing the names of all persons thus registered, sworn to and certified by the officers of registration, shall be filed for record and preservation in the clerk's office of the circuit court of the county, or the clerk's office of the corporation court of the city, as the case may be. Persons thus enrolled shall not be required to register again, unless they shall have ceased to be residents of the state, or become disqualified by section twenty-three. Any person denied registration under this section shall have the right of appeal to the circuit court of his county or the corporation court of his city or to the judge thereof in vacation.

“Section 20. After the first day of January, nineteen hundred and four, every male citizen of the United States, having the qualifications of age and residence required in section eighteen, shall be entitled to register, provided :

“First. That he has personally paid to the proper officer all state poll taxes assessed or assessable against him, under this or the former constitution, for the three years next preceding that in which he offers to register ; or, if he come of age at such time that no poll tax shall have been assessable against

him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him ; and,

“ Second. That, unless physically unable, he make application to register in his own handwriting, without aid, suggestion or memorandum, in the presence of the registration officers, stating therein his name, age, date and place of birth, residence and occupation at the time, and for the two years next preceding, and whether he has previously voted, and, if so, the state, county and precinct in which he voted last ; and,

“ Third. That he answer under oath any and all questions affecting his qualifications as an elector submitted to him by the officers of registration ; which questions and his answers thereto shall be reduced to writing, certified by said officers, and preserved as part of their official records.

“ Section 30. The General Assembly may prescribe a property qualification not exceeding two hundred and fifty dollars for voters in any county or sub-division thereof, or city or town, as a prerequisite for voting in any election for officers, other than the members of the General Assembly, to be wholly elected by the voters of such county or subdivision thereof, or city or town ; such action, if taken, to be had upon the initiative of a representative in the General Assembly of the county, city or town affected ; provided, that the General Assembly in its discretion may make such exemptions from the operation of said property qualification as shall not be in conflict with the Constitution of the United States.”

The suffrage clause of the new Alabama Constitution excludes idiots and insane persons, vagrants, persons buying or selling votes, or offering to buy or sell, making, or offering to make false returns in elections or primaries, or suborning witnesses or registrars to secure registration, and felons.

Foreigners not becoming citizens when entitled thereto cease to have the right to vote till they become citizens. Period of residence in the state two years, in county one year and in precinct or ward three months. Registration and payment of

a poll tax are required. These provisions become effective at the general election of 1902, and apply to all elections, state and local.

Registration before December 20, 1902 : male citizens of the state and United States and foreigners who, before ratification of this constitution, have declared intentions to become citizens, and have not had opportunity to perfect citizenship by December 20, 1902, twenty-one years of age, who have above described residence qualifications, not disqualified by crime or mental condition, may register, if coming under any of the following classes :

1. Those who have honorably served in land or naval forces of United States in war, or of Confederate States, or Alabama in civil war.

2. Lawful descendants of persons who served as above.

3. " All persons who are of good character and who understand the duties and obligations of citizenship under a republican form of government."

Unless disqualified under provisions previously given, any one registered before January 1, 1903, remains an elector for life, and need not register again except on change of residence, when he may register on production of certificate.

Between December 20, 1902, and January 1, 1903, there is to be no registration ; and after that date the applicant for registration must come under one of the following classes :

1. Those who can read and write any article of the United States Constitution in the English language, and have worked at some lawful employment, business, occupation, trade or calling for a greater part of year next preceding registration, if not physically unable to work.

2. Those unable to read and write, if such inability is due solely to physical disability.

3. Resident owner, or husband of woman who is owner, of 40 acres of land.

4. Owner, or husband of woman who is owner, of real or personal property assessed at \$300.

Applicant for registration may be required to state under oath his residence for preceding five years, name or names by which known during that period, and employer or employers during such period.

Registration of electors after January 1, 1903, to be provided for by the legislature. Till then registration governed by regulations incorporated in the constitution. Governor, auditor and commissioner of agriculture and industries to be Board of Appointment and to name in each county within 60 days of ratification of constitution a board of registrars of three persons.

All judges under the new constitution are elected by popular vote.

An event of importance has happened in California. Legislative reference was made to a commission of learned lawyers to report amendments to the code. These, having been prepared with care, received legislative sanction; but it was held in *Lewis vs. Dunn*, 134 Calif. 291, that this act of the legislature is void as being in violation of the state constitution, because the original code was not set out in full, and because the subject of the act was not fully set forth in its title. It will thus be seen that code amendments in that state are attended with serious difficulties.

Some of the points thus passed on seem to have been decided differently in Mississippi. (*Hunt vs. Wright*, 70 Miss. 298.)

CORPORATIONS.

In South Carolina corporations may be dissolved by a resolution adopted by a majority of the stockholders.

In the same state a statute has been passed providing "That any corporation of this state, organized for the purpose of doing a general banking, shipbuilding and trust company business, or trust company business alone, may, by a resolution adopted at the meeting of its subscribers for organization, or its by-laws adopted after such organization, provide for the

election of two classes of directors, to wit: active and advisory, and may prescribe distinct duties to be devolved upon each of said classes; and may elect such number of directors for each of said classes as may be deemed advisable; and that it may, from time to time, alter its by-laws with reference thereto."

This statute has rather a sinister aspect. If both classes are equally responsible the separation seems to be unmeaning; and if the advisory directors are not responsible for corporate management men of means may organize corporations and avoid individual responsibility by selecting men of straw for active directors.

In New York any stock corporation, except monied corporations, may buy and sell stocks, bonds or other evidence of indebtedness of any other corporation, giving its own stock etc., in exchange, if authorized in its certificate of incorporation, or by any amendatory certificate, or, if the stock so bought or sold is that of a corporation engaged in a similar business with that of the buyer. Any corporation may, upon unanimous vote of its stockholders, guarantee the bonds of any other domestic corporation engaged in the same general line of business; and any corporation owning the entire stock of any other domestic corporation may, on a two-thirds vote of its stockholders, guarantee the bonds of such other corporation. Another statute of New York provides that when a corporation owns all of the stock of another corporation engaged in similar business it may merge the latter, and may thus acquire all of its property, rights, privileges and franchises.

In Kentucky an amendment to a former act releases the double liability of stockholders, except stockholders of banks, trust companies, guarantee companies, investment companies and insurance companies.

MUNICIPAL CORPORATIONS.

South Carolina has passed an act providing for an extension of municipal charters by a majority vote of the free-

holders. The object is to extend the term of expiring charters without the necessity of special legislation. This is followed by an act providing for the incorporation of towns with populations running from 1000 to 5000 by a majority vote of resident freeholders, and by an act making municipal charters perpetual.

Iowa appoints a non-partizan board of police and fire commissioners for cities of the first class. Policemen are to be selected under civil service rules.

CRIMINAL LAW.

South Carolina has passed an act providing that no one shall carry a pistol, whether concealed or not, less than twenty inches long and three pounds in weight; and all persons are forbidden to manufacture, sell or offer to sell any pistol of less length or weight, under heavy penalties. It would be difficult to conceal a pistol of the size and weight mentioned; and its discomfort will probably have a wholesome and deterring effect.

In the same state any common carrier converting to its own use property consigned to it for transportation is made liable in punitive damages not exceeding three times its value.

Maryland punishes druggists and chemists who incorrectly compound prescriptions. Intent is not mentioned as an ingredient of the offense.

Massachusetts has greatly relaxed the sabbatarian laws that formerly existed in that state. A recent act provides as follows:

“Section 3. The provisions of the preceding section shall not be held to prohibit the manufacture and distribution of steam, gas or electricity for illuminating purposes, heat or motive power, nor the distribution of water for fire or domestic purposes, nor the use of the telegraph or the telephone, nor the retail sale of drugs and medicines, nor articles ordered by the prescription of a physician or mechanical appliances used by physicians or surgeons, nor the retail sale of tobacco in any

of its forms by licensed innholders, common victuallers, druggists and newsdealers whose stores are open for the sale of newspapers every day in the week, nor the retail sale of ice cream, soda water and confectionery by licensed innholders and druggists, and by such licensed common victuallers as are not also licensed to sell intoxicating liquors, and who are authorized to keep open their places of business on the Lord's day; nor the letting of horses and carriages or of yachts and boats, nor the running of steam ferryboats on established routes, nor the running of street railway cars, nor the preparation, printing and publication of newspapers, nor the sale and delivery of newspapers, nor the wholesale or retail sale and delivery of milk, nor the transportation of milk, nor the making of butter and cheese, nor the keeping open of public bath houses, nor the making or selling by bakers or their employees, before ten o'clock in the morning and between the hours of four o'clock and half-past six o'clock in the evening, of bread or other food usually dealt in by them, nor the carrying on of the business of bootblacks before eleven o'clock in the forenoon."

In Iowa it is provided that whoever shall advise, counsel, encourage, advocate or incite to the unlawful killing of any human being, where no such killing takes place, shall be imprisoned in the penitentiary for not less than twenty years.

Ohio has passed an act declaring that if any person shall attempt to take the life of the President of the United States, or of any cabinet officer in the line of succession to the presidency, or of the governor of that state, or of any state, territory or possession of the United States, he shall be punished, if the attempt results in the death of the intended victim, with death; otherwise with imprisonment for life.

New York has passed an act defining and punishing criminal anarchy. "Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head, or of any of the executive officials of government, by any unlawful means. The

advocacy of such doctrine either by word of mouth or writing is a felony."

"1. Any person that advises or teaches the duty, necessity or propriety of overturning organized government by force or violence, or by assassination, of any of the executive officials of government, or by any unlawful means, or

"2. Prints, publishes, edits, issues, or knowingly circulates, sells, distributes or publicly displays any written or printed matter advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means, or

"3. Openly, wilfully and deliberately justifies orally, or in writing, the assassination, or unlawful killing or assaulting of any officer of the United States, or of any state, or of any civilized nation having an organized government, because of his official character, or any other crime, with intent to teach, spread or advocate the propriety of the doctrines of criminal anarchy; or

"4. Organizes, or helps to organize, or becomes a member of, or voluntarily assembles with any society, group, or assembly of persons formed to teach or advocate such doctrine, is guilty of a felony, and punished by imprisonment for not more than ten years, or by a fine of not more than \$5000, or both.

"Every editor or proprietor of a book, newspaper or serial, and every manager of a partnership or corporation by which it is issued, is chargeable with the matter thus published; but the defendant may show that the matter complained of was published without his knowledge or fault, and against his wishes, by another, without his authority, and that his act was disavowed by him as soon as known.

"Where two or more persons assemble for the purpose of advocating or teaching the doctrine of criminal anarchy, or participates therein by his presence, aid or instigation, he shall be guilty of a felony and shall be punished as above.

“ All owners, agents or occupants of any place, building or room who knowingly and wilfully permit therein any assemblage thus forbidden shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than two years, and by a fine of not more than \$2000.”

New Jersey has passed a somewhat similar act.

In New York if any officer of a bank or any banker shall receive a deposit, knowing the bank to be insolvent, he is guilty of a misdemeanor; and, if the amount deposited exceeds \$25, he is guilty of a felony, and is punishable by fine and imprisonment.

New York makes it a misdemeanor for anyone to advertise in newspapers, by letters or otherwise, that he will aid in procuring divorces or decrees of annulment of marriage.

In South Carolina kidnapping of children is punished by imprisonment for life. In Iowa it is punishable by confinement in the penitentiary for not less than ten years.

In South Carolina train robbing and conspiring to rob trains are made felonies.

In Mississippi it is provided that statutory changes affecting crimes and their punishment shall not apply to offenses previously committed; but if punishment of milder type is provided by later statute it may be substituted for punishment previously prescribed.

Massachusetts has passed the following act:

Section 1. It shall be unlawful for any person to advertise in a newspaper circulated in this commonwealth, or by any other means, to perform or to procure the performance of the marriage ceremony.

This act was probably not intended to prevent gentle solicitations and courtship as practiced among all nations; though the language might bear that construction.

USURY.

In New Jersey it is provided that no corporation shall interpose the plea of usury.

In South Carolina all life insurance companies are required to deposit their assets with the State Treasurer of the State.

INSURANCE

In South Carolina all life insurance companies are required to deposit their assets with the State Treasurer of the State.

In Maryland all foreign insurance companies except life fire and marine companies shall pay the same license fee as any that is required of Maryland companies in the states where they are organized.

In New York where a policy is given on the life of a minor who is not under fifteen years of age, for the benefit of his father, mother, husband, wife, brother or sister, the assured shall not, by reason of infancy alone, be deemed incompetent to contract for the insurance, for its surrender, or the discharge of any money or benefit accruing from it.

In New Jersey when a life policy has lapsed for non-payment of premiums, the insured may within three months apply for a new policy on the conditions contained in the forfeited policy, or a new paid up policy for the amount of premiums actually paid, to be computed as provided in the act. After payment of premiums for two years life policies shall be incontestable, except that they may be readjusted for misstatement of age.

In New Jersey when a policy of life insurance is issued, the sum named in it shall be paid to the beneficiary therein mentioned, the amount of any premiums paid in fraud of creditors to enure to their benefit; but the insurer shall be discharged of liability by payment to the beneficiary, unless notified of the claims of creditors before making such payment. In this state a general act covering the law of insurance containing many interesting provisions was passed by the last legislature.

In Mississippi property is not to be insured above its true value ; but in a suit on the policy the value therein named shall be conclusive. Where a policy is on merchandise, changing in species and value, recovery shall be for amount of real loss, not exceeding the sum named in the policy.

This act, and those to which it is an amendment, were, perhaps, ill-advised. Under them the insurance companies refuse to insure cotton, so that home banks will not lend money on that staple ; and great difficulty as to moving of the crop for this year is apprehended. A strong appeal has lately been made to the governor to call the legislature in special session in order to modify or repeal these statutes.

Mississippi also provides that no life insurance company shall discriminate in favor of persons of the same class and equal expectation of life in amount of premiums ; and that all conditions of insurance must be plainly expressed in the policy or in the application for it. The proceeds of a life policy to an amount not exceeding \$10,000 upon any one life shall enure to the beneficiaries named therein, free from the debts of the person whose life was insured, though such person paid the premiums thereon. Proceeds of life policies not exceeding \$5000 payable to the executor or administrator of the insured enure to the heirs or legatees, freed from all liabilities of the decedent.

In Iowa it is provided that where promissory notes are given for payment of premiums on any policy issued to insure against losses by fire, lightning, hail or storm, they shall be considered as full payment, and shall continue the policy in force, whether the notes are paid at maturity or not, for the period named. The act does not apply to premiums and assessments of purely mutual insurance companies fixed by by-laws or contract and overdue for sixty days.

Proof of loss of personal property may be made within sixty days of the date of loss by affidavit, stating how it occurred, as far as may be within the knowledge of the insured, and its extent, any agreement to the contrary notwithstanding.

BILLS OF LADING.

In Maryland all carriers must issue on demand bills of lading to the consignor "or order," and such instruments shall be negotiable in the same sense as bills of exchange and promissory notes.

OFFICIAL BONDS.

In Mississippi bonds of state officials are to be secured by guaranty companies, the premiums to be paid by the state. If guarantee companies refuse to guarantee in any case, personal or individual sureties may be substituted.

PUBLIC LIBRARIES.

New York authorizes local taxation for the support and maintenance of public libraries. Various other states have passed similar acts.

LIS PENDENS.

In New Jersey no *lis pendens* is established until notice of the pendency of the suit is filed in the office of the register of deeds; and a suitor may discharge the *lis pendens* by giving such security as the court may direct.

RAILWAYS.

In New York baggage checked must be delivered to the owner at point of destination, or at any intermediate point, on thirty minutes' notice to the baggage master; and uncrated bicycles shall be checked as baggage.

Numerous acts permitting consolidation of different railroad companies have been passed; also various laws as to the killing of stock.

In Iowa railway companies are to file with each county auditor plats showing all lands in the county occupied by them. They are to file annually for purposes of taxation reports showing gross earnings separately on state and interstate traffic. Taxes on the latter are to be computed upon the

length of carriage within the state as compared with the length of carriage elsewhere. Provision is made for taxation of equipment companies having cars running on lines of railway lying within the state according to the same ratio; and they are required to file annual reports. Any domestic railway company may lease, buy or control any connecting extension of its road (not parallel or competing with its own lines) lying elsewhere in the United States; and to that end may buy the stock and securities of such other railways.

BANKS.

In Iowa banks may lend money not to exceed one-half of their capital stock, secured by liens on unincumbered farm lands worth at least twice the amount lent.

GAME LAWS.

Ohio enacts that no person shall catch, kill or injure, or pursue with such intent, any skunk, except between the first day of November and the first day of February next ensuing. The act does not apply to persons who have farms for raising these animals, and who kill them within their own enclosures.

Many laws under this head have been passed to protect game against the unseasonable depredations of the hunter, and against the non-resident sportsman, whose knowledge of state lines seems to be inaccurate and undeveloped. If these laws are rigidly enforced the exploits of the fisherman will be confined to communities where his character for veracity is best known, and where his stories will least tend to unsettle the foundations of belief; and the horn of the hunter will be heard only on his native hills.

Many laws have also been enacted to prevent the destruction of useful and attractive birds.

PUBLIC HEALTH.

Massachusetts enforces compulsory vaccination.

In South Carolina peddlers of medicine must take out a license; and the formula of any medicine sold by them must

be printed or written on it, and must have been approved by some physician.

New Jersey appropriates \$10,000 to the Agricultural Experiment Station to investigate and report upon the mosquitoes occurring within the state, their habits, life-history, breeding-places, relation to malarial and other diseases, the injury caused by them to the agricultural, sanitary and other interests of the state, their natural enemies and the best methods of lessening, controlling or otherwise diminishing their numbers, injury or detrimental effect upon such agricultural, sanitary and other interests.

Maryland creates a tuberculosis commission, to which appropriate powers are granted. Many statutes have been passed for sanitation, for the protection of public health, and for the regulation of the sale of poisons. Several states have taken measures for establishing hospitals for consumptives.

Though forbidden as an article of consumption by the Mosaic law, the legislature of Minnesota deems that the use of lard should be encouraged and protected. A late act provides that no person within the state shall manufacture for sale, or have within his possession with intent to sell, or offer to expose for sale, or sell as lard, any substance not the legitimate and exclusive product of the fat of the hog. All lard is adulterated if any substitute is mixed with it so as to lessen or depreciate its quality, strength or purity, or if any valuable ingredient has been wholly or in part abstracted from it.

Packages for any substitute for lard or hog's fat must have branded or printed on them in letters not less than an inch long the words "Lard Substitute," with the names and proportions of the constituents of the compound. If the article is intended as an imitation of lard, or substitute for it, it must in like manner be branded or labelled "Adulterated Lard," with the additional formula; and anyone selling any such substitute or imitation must, at the time of sale, give to the purchaser a printed card conveying the same information.

The act further provides that everyone who manufactures for sale, or offers, or exposes for sale, or sells, or serves to guests as keeper of a hotel, restaurant, dining-room, or in any other capacity any of such substitutes, adulterations or imitations as thus defined, shall, at the time of sale, furnish to the purchaser a card upon which is distinctly and legibly printed the words: "This food is prepared with lard substitute (or adulterated lard);" or, in case no bill of fare is provided, there shall be kept constantly posted upon each of the sides of the dining-room, in a conspicuous position, cards upon the face of which is distinctly and legibly printed in the English language, and in letters of sufficient size to be visible from all parts of the room, the words "Lard Substitute (or Adulterated Lard) is used in the preparation of the food served here."

Possession of the forbidden articles is deemed *prima facie* evidence of intent to sell.

The dairy and food commissioner and his assistants, experts, chemists and agents are to see to the enforcement of the act; and they are to have access to all places where the forbidden articles are manufactured or sold; and may break open any package or vessel containing such articles, inspect them and take samples. All clerks, bookkeepers, express agents, railroad officials, employees and common carriers shall, when called on, render all assistance in their power in tracing, finding or discovering the prohibited articles, under penalty of not less than twenty-five nor more than fifty dollars. Dealers and others violating the act are to be punished by a fine of not less than twenty-five and not more than seventy-five dollars for each offence, or by imprisonment for not less than thirty nor more than sixty days.

It is evident from this legislation that the addition of anything to lard, or taking anything from it, or contriving any substitute for it, is regarded as more deleterious and dangerous than like applications to other kinds of food.

If it were not for the paramount importance of public health it might be inferred that laws of this kind were passed

for the purpose of creating monopolies in favor of certain forms of production.

New York provides for admission of free patients into the hospital in the Adirondacks for treatment of tuberculosis where such patients are unable to pay for same.

INFANCY.

In Massachusetts a married woman under twenty-one years may convey lands as if she was of full age.

LABORERS.

Massachusetts directs the labor commission to endeavor to promote uniformity of legislation, making eight hours a legal day's labor throughout the United States.

In New York in the construction of public works by the state or municipality only citizens of the United States shall be employed.

REFORMATION OF INEBRIATES AND OTHERS.

In Iowa dipsomaniacs, inebriates and persons addicted to the use of morphine and other narcotics may be temporarily committed to hospitals for the insane for not less than one year nor more than three years for the first commitment, and not less than two nor more than five years for a second commitment; but the governor, on a proper showing and on a pledge of abstention on the part of the patient, may grant paroles, to be forfeited in case conditions are broken.

No one is permitted to sell cocaine except on the written prescription of a regular physician.

AUTOMOBILES.

Massachusetts regulates the speed of these machines, and prescribes their management, so as to prevent the frightening of horses and other accidents.

ELEVATORS.

In Massachusetts elevators running more than one hundred feet a minute must be in charge of persons not less than eighteen years of age, and no other elevator shall be run by a person less than sixteen years old.

NEGLECTED CHILDREN.

Virginia has passed a law for the care and custody of neglected children.

Iowa has passed an excellent law on this subject.

EVIDENCE.

Virginia permits husbands and wives to testify for and against each other except as to communications made by the one to the other. Neither shall testify as to charges of fraud in gifts or sales made by the other. In criminal cases neither shall be compelled to testify for or against the other without his or her consent.

TAXATION.

In Massachusetts the succession tax is to be assessed on the value of the succession at the time that the right of possession accrues; and the value of existing life estates and estates for years shall be deducted.

Minnesota provides for a tax on inheritance, devises, legacies and gifts of more than \$10,000 in value.

In Maryland all mortgagees must swear that the mortgagee has not required the mortgagor to pay any tax on the interest covenanted to be paid, and that he will not require him to pay it.

DIVORCE.

In New York no judgment for divorce or annulling a marriage shall be entered until after three months from the date of filing the decision of the court or the report of the referee.

New Jersey has passed a general divorce law. In regard to residence the act is so stringent as to greatly limit the facility of obtaining divorces sometimes allowed in other states.

JURORS.

In New York it would seem that some citizens neglect the performance of the civic duty of voting at elections. The legislature has devised a method of compelling such persons to do the state some service in another manner. Two boxes for the names of jurors are provided, one for those of "non-voters" and the other for those of "voters"; and, until exhausted, all names are to be drawn from the box containing the names of the "non-voters."

FRAUDULENT SALES.

In New York all sales of merchandise out of the ordinary course of trade, or of an entire stock of merchandise in bulk, shall be fraudulent and void as against creditors, unless the buyer shall, at least five days before the sale, make explicit inquiry of the seller as to the residence or place of business of every creditor of the seller, and the amount of each debt, terms of the proposed sale, and of the stated cost price of such merchandise, and of the agreed price; all of which must be notified to the creditors personally or by registered letter, so far as can be done by the exercise of reasonable diligence.

Ohio has passed a similar act.

WAREHOUSEMEN.

New York has passed an elaborate law relating to this class of bailees much too intricate to be here set out.

MARRIED WOMEN.

In New York a married woman may sue, in her own and separate right, for all wages, salary, profits or compensation for which she may render services or which she may derive

from any business or occupation ; and her husband shall have no right of action therefor.

In New Jersey any woman having a dower interest in lands, or an interest for life or years devised in lieu of dower, and marrying again, may execute a release of such interest without the joinder of her husband in such release.

Any married woman in New Jersey may insure her husband's life for her sole use, and, in case she survives her husband, the insurance shall be paid to her, or for her use, free from the claims of the representatives of her husband or of his creditors. She may assign the policy during his life with his consent.

MORTGAGES.

In New Jersey no mortgage of household goods and furniture shall be valid unless executed both by husband and wife, and duly recorded ; but when the mortgage is given to secure purchase money the joinder of the wife is unnecessary.

ELECTIONS.

In New Jersey the use of voting machines is permitted ; and so in other states.

CONVEYANCES.

In New Jersey all deeds containing no exception shall pass all the interest of the grantor ; and the word "heir" shall not be necessary to convey a fee-simple title.

CURATIVE ACTS.

Various curative statutes have been passed, validating conveyances defectively acknowledged. The laws concerning such acknowledgments in many of the states are so complex and technical that mistakes and omissions frequently occur ; hence statutes of this kind are passed from time to time ; but when vested rights of third persons have attached, they are, of course, ineffectual. If the forms of acknowledgment could

be simplified in accordance with the recommendation of the Committee on Uniformity of Laws, cases for curative statutes would rarely be presented.

PERSONAL INJURIES TO EMPLOYEES.

Ohio has passed this act :

“An employer shall be responsible in damages for personal injury caused to an employee, who is himself in the exercise of due care and diligence at the time, by reason of any defect in the condition of the machinery or appliances connected with or used in the business of the employer, which arose from, or had not been discovered or remedied owing to the negligence of the employer, or of any person in the service of the employer, entrusted by him with the duty of inspection, repair or of seeing that the machinery or appliances were in proper condition.”

Virginia has passed an act still more stringent—one that goes far to make railways guarantors against all injuries suffered by employees. It is as follows :

“1. Be it enacted, etc., That every corporation operating a railroad in this state, whether such corporation be created under the laws of this state, or otherwise, shall be liable in damages for any and all injury sustained by any employee of such corporation as follows: When such injury results from the wrongful act, neglect or default of an agent or officer of such corporation superior to the employee injured, or of a person employed by such corporation having the right to control or direct the services of such employee injured or the services of the employee by whom he is injured; and also when such injury results from the wrongful act, neglect or default of a co-employee engaged in another department of labor from that of the employee injured, or of a co-employee on another train of cars, or of a co-employee who has charge of any switch, signal point or locomotive engine, or who is charged with dispatching trains or transmitting telegraphic or telephonic orders. Knowledge by any employee injured of the defective

or unsafe character or condition of any machinery, ways, appliances or structures of such corporation shall not of itself be a bar to recovery for any injury or death caused thereby. When death, whether instantaneous or otherwise, results from any injury to any employee of such corporation received as aforesaid, the personal representative of such employee shall have a right of action thereof or against such corporation, and may recover damages in respect thereof. Any contract or agreement, express or implied, made by any such employee, to waive the benefit of this section, or any part thereof, shall be null and void; and this section shall not be construed to deprive any such employee, or his personal representative, of any right or remedy to which he is now entitled under the laws of this state."

In New York the employer is made liable for personal injuries or death sustained by his employee by reason of any defect in ways, works or machinery used in the business of the employer, which arose from or had not been discovered or remedied, owing to his negligence or that of any person in his service entrusted by him with the duty of seeing that such ways, works or machinery were in good condition; or by reason of the negligence of any person in the service of the employer entrusted with the superintendence, whose sole or principal duty is that of superintendence, or, in the absence of such superintendent, or the negligence of any person acting as superintendent with the authority or consent of such employer. Notice of the time, place and cause of the injury must be given within one hundred and twenty days, and suit must be brought within one year from the date of the injury or death of the employee.

An employee entering or continuing in the service of the employer is presumed to have assented to the necessary risks of the employment, and to no others; but only to those inherent in the nature of the business remaining after the employer has exercised due care in providing for the safety of his employees, and has complied with the laws in respect thereof. Continu-

ance by the employee in the service after his discovery of danger shall not, as a matter of law, be considered as an assent to the risks, or as contributory negligence; but this is a question of fact for the jury, subject to the usual power of the courts to set aside verdicts. But the employee cannot recover where he knew of the defect or negligence causing the injury, and failed, within a reasonable time, to give notice of that fact, unless the employer, or some one having general superintendence, already had such knowledge.

By an act passed in Maryland any person, natural or artificial, engaged in the business of operating any coal or clay mine, quarry or street railway, or any city, town or county engaged in constructing any sewer, excavation or other physical structure, or the contractors of such, shall be liable to any employee, or to his representatives as therein named, for the damages flowing from an injury to said employee, or from the death of such employee, when such injury or death is caused by the negligence of the employer or by the negligence of any servant or employee of such employer; and if it appears that such injury or death was caused by the joint negligence of any such employer, his servants or employees, on the one hand, and the negligence of the injured or deceased employee, on the other hand, then the employer shall be liable for one-half of the damages sustained by such injury or death.

Provided, however, that no employer, town, city or county (or contractor or contractors therefor) shall be liable under the preceding section of this act, if the said employer, city, town or county (or contractor or contractors therefor) shall pay the following annual sums in advance into the hands of the insurance commissioner of the state of Maryland, in monthly instalments: First. Every employer engaged in coal or clay mining, or quarrying, shall pay the annual sum of one dollar and eighty cents for every person employed and working in the state of Maryland. Second. Every employer engaged in operating any steam railroad shall pay the annual sum of three dollars for every person employed by it residing in the

state of Maryland. Third. Every employer engaged in the business of operating any street railway or trolley road shall pay the annual sum of sixty cents for every person employed by it within the state of Maryland. Fourth. Every town, city or county (or the contractor or contractors therefor) shall pay such annual sum of money for each person employed in the work of constructing any sewer, excavation or other physical structure, as the said insurance commissioner shall adjudge to be necessary to insure such employees in the sum of one thousand dollars in the event of death in such employment, considering the occupation of trade risk involved. Provided, however, that any employer, town, city or county (or contractor therefor) may deduct from the wages of their respective employees a sum not exceeding one-half of the amount payable to said insurance commissioner under this act, and make such deduction by weekly, monthly or other periodic instalments, such employers to inform their employees of this provision at the time of their employment, or of the continuance of their employment under this act, as a condition of such employment; provided, further, that no party liable under the preceding section of this act shall be entitled to take advantage of the provisions of this section unless the said party shall on the first Monday of each month make a report under oath to the insurance commissioner aforesaid stating the number of persons employed in this state in the respective occupations covered by this act during the preceding month (even if only employed for a fraction of said month), and the estimated number to be employed during the month of such report, and shall pay to said insurance commissioner the proper monthly instalment for each person employed during such month, making up any shortage in the payment for the preceding month; and it shall be unlawful for any person, employer or employee to make any contract waiving or avoiding or affecting the full legal effect of this act.

POLICE REGULATIONS.

Many statutes have been passed for the safety, health and comfort of miners and laborers in factories, and for fire escapes in high buildings of every kind; all animated by the same benevolent spirit, but varying greatly in terms. So provision is made for examination and licence of dentists, osteopaths, veterinary surgeons, barbers and persons of other callings.

CEMETERIES.

Iowa provides for a trustee for each cemetery. His duties are prescribed; and he may receive all donations for cemetery purposes. All property committed to him is free from taxation.

WOMAN'S RIGHTS.

Maryland validates all acts done by women as notaries public, and authorizes the appointment of women as such notaries. That state has also passed a law for the admission of women to the bar.

By an act of Kentucky the right of women to vote in cities and towns of the first and second-class for members of boards of education is taken away, though they may be elected as members of such boards.

WAGES.

In Georgia if an employee of a corporation dies, wages due him not exceeding \$100 may be paid to his widow or minor children without administration on his estate.

EDUCATION.

Maryland and Iowa have passed laws for compulsory education.

REGISTRATION.

Iowa requires that copies of wills devising lands shall be registered in all counties wherein the lands lie.

ADMISSION TO THE BAR.

Several states have passed laws on this subject, all seeming to require a higher standard than that previously enforced. As this is a subject within the sphere of the Committee on Legal Education and Admission to the Bar, I leave it for their consideration and more mature judgment.

FEDERAL LEGISLATION.

The Census Office has been made permanent, and its equipment has been provided for.

Provision has been made for the acknowledgment of deeds in the Philippines and in Porto Rico as affecting lands in the territories and in the District of Columbia. The Spanish war tax has been repealed. The comptroller of the currency is authorized to extend for twenty years the charter of any national bank. The immigration of Chinese into the United States and all territory under its jurisdiction is forbidden.

You are all familiar with the terms of the Oleomargarine Act, which was long under discussion, and which was passed on May 9th. An act was passed regulating the commutation of time of federal prisoners for good conduct. Pay of jurors was raised to \$3 a day. An act provides for the punishment of false printing or marking of food and dairy products; another relates to the marks of names and weights on packages of tobacco.

Train-robbing in the territories is forbidden under heavy penalties. Another act regulates the sale and transportation of viruses, serums, toxins and like products.

PORTO RICO.

The government in this island is an experiment that will be watched with interest. To those of you who may desire to know more of what is going on there than I have time to impart, I will commend an article in the *Atlantic Monthly* for July, 1902, under the title, "Two Years of Legislation in

Porto Rico," written by Mr. William F. Willoughby. I can only notice the acts passed since our last meeting.

There is an act for the establishment of an asylum for the blind; an act for the publication of the decisions of the supreme and federal courts of the island, and a Sunday law providing that on Sundays commercial and industrial establishments, except hotels, restaurants, bakeries and places where only refreshments are sold, and theatres and places of amusements in aid of charities, shall be closed after the hour of noon. A system of decimal weights and measures is adopted.

An act provides that children under sixteen shall not be allowed to work in factories more than six hours a day. There is an act to prevent cruelty to animals. Freedom of assemblage of laborers is permitted; but violence and force are forbidden. Gaming is prohibited; as are also the carrying of firearms. A bill of rights guaranteeing religious freedom, freedom from search and freedom of speech may be mentioned. A usury law fixes the maximum of interest at 12 per cent. An employer's liability act is similar to that passed in New York already mentioned; but recoveries for personal injuries shall not exceed \$2000, and in case of death they shall not exceed \$3000. There is a chapter on injunctions that provides, among other things, that injunctions may issue to restrain illegal taxes, charges and assessments. A general incorporation act fails to confer the extraordinary powers commonly granted in some of our states. A political code was adopted.

On the whole it may be said that the legislation is conservative. It is distinctively American.

TRUSTS.

We are all by this time familiar with what are called "Trusts"; so-called, perhaps, because they contain in their composition not a single fiduciary element.

South Carolina has passed two acts on this subject. The first act forbids all persons, natural and artificial, to form

pools, trusts or combinations for the purpose of regulating or fixing the price of any article of trade or merchandise, or to limit the quantity of any article of manufacture or commodity, or of any repair, or the premium of any insurance. An exhaustive definition of monopoly is given; and the practices of underselling with a view to stifle competition and boycotting are denounced. Heavy fines are prescribed for any violation of the act; and, in addition, any domestic corporation infringing its provisions shall forfeit its charter, and any foreign corporation so offending shall forfeit its right to do business within the state.

The second act relates to procedure. The attorney-general may make an application to a judge of the supreme or circuit court for the examination of any suspected person, which shall be had before the judge himself or before a referee; the judge having power to issue preliminary injunctions to prevent violations pending the investigation. The person charged may be compelled to produce all books and other documents relating to the subject of the examination. No witness shall be excused from testifying on the ground that his testimony may tend to incriminate him; but no witness shall be punished on account of any transaction concerning which he may testify.

There has been legislation along the same lines in other states, developing, however, no new features.

A German writer, who has lately written a book about American trusts, counts the American Bar among these parasitic institutions, saying that we hold meetings for the purpose of regulating fees; a very surprising statement that could hardly have been made by anyone save a foreigner unacquainted with professional life in this country. It is due to the truth of history to say that no such meetings are held; and that we can look upon the pending contest for supremacy between the United States and the Beef Trust, if not with indifference, at least without apprehension.

Our country, during the last thirty years, has witnessed a change of such magnitude as to be without a single parallel in

history. By means of vast aggregations of money, corporate monopolies have been established in almost every branch of industry. What effect these tremendous creations will have on our future destiny morally, socially, financially, legally, no one ventures to predict with any degree of confidence. If it is true, as said by Oliver Cromwell, that no one goes so far as the man that does not know where he is going, we are apparently entering upon a long journey.

Monopolies are as old as human history; and we cannot doubt that by their grinding oppression they kept men and women lying awake of nights long before the first page of history was written. They were forbidden by the laws of ancient Greece and Rome; they were forbidden by the common law of England; and the common law was reinforced from time to time by statutes. For a while during the reign of Elizabeth they flourished; for the virgin queen was prolific in progeny of that sort. At one time she had licensed more than fifty monopolies to prey on the community. Hume, the historian, was amazed at their number and rapacity. He says:

“When this list was read in the House a member cried: ‘Is not bread in the number?’ ‘Bread,’ said every one in astonishment. ‘Yes, I assure you,’ replied he, ‘if affairs go on at this rate we shall have bread reduced to a monopoly before next parliament.’ These monopolies were so exorbitant that in some places they raised the price of salt from sixteen pence a bushel to fourteen or fifteen shillings.”

He adds that these grievances were “the most intolerable for the present and the most pernicious in their consequences that were ever known in any age or government.”

In order to build up an empire in the East, parliament afterwards granted a monopoly to the East India Company, which became so oppressive that its overthrow was a matter of necessity. It soon learned to charge 400 per cent. profit on every article that it sold; and the tea that it sold became so inferior in quality that it had hardly a trace of the plant of that name.

Of course these results were not reached all at once ; prices were raised gradually and stealthily under pretence of decreased production.

Instead of fifty monopolies we have at present more than four thousand, to say nothing of price- and rate-fixing and profit-sharing pools, with buying and selling agencies, exercising functions similar to those of the trusts, all organized for the purpose of fixing prices arbitrarily. Without the advantage of fixing prices in this manner there would be no motive for the combination of many diverse interests in one. In most cases neither the purpose nor the power is denied; on the contrary they are proclaimed for the object of raising the price of corporate securities. That the advantage arising from suppressed rivalry and the power to dictate prices is duly appreciated is shown by the vast amount of money lavishly invested in these combinations. As the number runs high up into the thousands, we might naturally suppose that the process had been exhausted ; but every day brings its report of some new and gigantic alliance, the future of which cannot be predicted, since most of these corporations are authorized to buy up the stock of any other corporation, so that they may at any time acquire supreme control over industries extremely remote from those ostensibly in view when they were first created.

The immediate success of one of these combinations, if successful at all, is alluring in a high degree. If the property is capitalized at twice its value, the lowest capitalization known, and the securities are floated at par, the result is that the former owners find themselves twice as rich as they were before, and at a very trifling outlay of time, money or energy, to say nothing of a future of immense possibilities. We shall not be surprised, therefore, when told that many similar organizations are started with the deliberate intention of swindling unsuspecting stockholders. Nor need we have been surprised when the Governor of New Jersey, by proclamation of January 10, 1902, declared 688 charters granted by that state forfeited for

non-payment of taxes assessed for their issue. Two of these infant decedents were at least appropriately named. They were called respectively "The Aladdin Lamp Company" and "The American Octopus Company."

The Supreme Court of the United States and several of our presidents have more than once called attention to the gravity of the situation; and we cannot suppose that men occupying such high positions of responsibility would wantonly excite public apprehension.

It is said that by vast aggregation of capital production will be cheapened, and that the cost of transportation will be reduced—a proposition that cannot be successfully denied. But there were benefits in the competitive system that more than compensated for all losses; the individual initiative, the rivalry that awakens the keenest interest and keeps all of the faculties in continual activity. It was the system that rapidly transformed a few struggling colonies into one of the wealthiest nations on the globe; that created the wealth now utilized by the trusts. It is hard to condemn a system that has accomplished the greatest commercial and economic success known in history, proving decisively the truth of the immemorial adage that competition is the life of trade.

It was our boast for more than a century that under our social and governmental system there was equal opportunity for all. It was the system that produced such men as Franklin, Washington and Lincoln; such men as Peter Cooper and George Peabody; with very many others who successfully overcame the obstacles of poverty, want of education and impediments of every kind. At present there are many avenues of success that are practically closed to men of moderate fortune, and that are sealed against young men of ability and energy that must fight the battle of life without adventitious aids.

Ever since Aristotle, it has been a matter of common belief that great inequality of fortune is unfavorable to the happiness and to the stability of republics; and I know of no one who

has ventured an opinion that these vast and arbitrary combinations of capital will tend to an equal distribution of wealth.

Optimists tell us that under present conditions things will be better than they were formerly, when antiquated and unscientific notions prevailed; but, in view of the uniform and unbroken experience of ages, it is difficult to make men believe in a Utopia that is to follow from an exorbitant greed for money, or to dispel the general apprehension that exists.

A recent writer tells us that we are on the eve of a benevolent industrial feudalism; but a benevolent feudalism is a sheer contradiction of terms, since feudalism was one of the direst calamities that ever befell the sons of men; one that required centuries of strife and bloodshed to destroy; a calamity darkened with tyranny, ignorance, oppression, poverty, famine and pestilence beyond all known records. If we are to return, however, to a state of feudalism—which is now itself sufficiently antiquated—we shall, no doubt, ascribe benevolence to those who exercise an immense and denominating power, whether they have it or not, as language has had an early and a protracted training in the schools of adulation, submission and surrender. Those who used that language in the days when speech was enslaved were not always aware of the degradation implied; but to speak of benevolent feudalism at present is even a more glaring solecism than to speak of the benevolent plague or the benevolent smallpox. Feudalism stands for great power over the lives and happiness of others unrestrained by law. Such power, wherever it has existed, has always been abused. If it was not abused at first, it was sure to be abused in the end.

This is particularly true of corporations organized solely for pecuniary profit, which, obedient to their original impulse, are disenthralled from many restraints that exercise a salutary influence over the conduct of the lives of individual men.

There is one form of tyranny that governments, however instituted, cannot exercise. Efforts have often been made to control prices by law, but never successfully. The natural

laws of trade always triumphed over the artificial laws of men. But whoever can control the supply can fix his own prices, as we see in the case of Pharaoh in Egypt. It was not as king that he asserted that power; for the command of the supply would have given it to him if he had been a private individual.

President Roosevelt has said more than once that the power of corporations over prices should be subjected to public control. Very recently he said: "We may need, and, in my belief, we do need, new legislation conceived in no radical or revolutionary spirit, but in a spirit of common sense, common honesty and a resolute desire to face facts as they are."

This language is clear, and will meet with general approval. The principal difficulty pertains to the remedy. If existing laws could be enforced, perhaps no new ones would be needed. In all of the states where the English common law prevails, contracts greatly in restraint of trade, and monopolies of all kinds, are illegal; and though some states have chartered corporations with power "to do all things that a natural person may do," yet these enlarged grants do not authorize them to create monopolies, because even natural persons cannot do that without violating the law. It would seem then that a like violation by a corporation would furnish good ground for a forfeiture of its charter. But there are indications that all of the courts would not so hold. A few of the states favor these combinations and derive a considerable revenue from the grant of unlimited charters to all applicants. Under these circumstances uniformity of action is not to be expected. In the absence of that uniformity, statutes like that of South Carolina, just noticed, have but little effect on foreign corporations. The state may expel them and their agents from its boundaries; but if the articles which they supply are among the common necessities of life, they must still be bought, and probably at higher prices than if such acts had not been passed.

A remedy sometimes proposed with seeming confidence is that of publicity. Publicity is a good thing. Monopolies

delight in secrecy. It is said that the absent always suffer; and the public are not invited to participate in corporate meetings. Very lately corporations are organizing under conditions that do not permit even all of the stockholders to examine the books; that privilege being reserved for holders of preferred stock alone. It may be that persons who rely on this remedy of publicity are misled by the laws relating to the examination of the books of banks, which are very easily examined. Banks have only to do with a single commodity, one that has fixed and unvarying values; and the nature of the business is such as to call for a written voucher for every entry. The vocabulary of a bank bookkeeper hardly exceeds a dozen words. But even in the case of banks, where fraud or incompetence has supervened, the task of investigation is often attended with difficulty and ends in doubt. The difficulty is enormously increased when it comes to like examinations of the books of other corporate bodies doing an extensive and varied business. In such cases it is not infrequently found that the mysteries of modern bookkeeping exceed those of alchemy; reminding one of the response of a railway president to his legal adviser to a question as to what the books of the company would show regarding a controversy then under consideration. "Well," said the president, "as I foresaw long ago that this dispute would probably sometime arise, and, not knowing exactly what form it would assume, I kept the books in a flexible condition."

Flexible bookkeeping may justly claim a respectable antiquity. It formed one of the minor charges of Cicero against Verres; and a contemporary poet surmises that it was utilized by the contractors that built the pyramids.

The Interstate Commerce Commission, having grappled with this problem for eighteen years, express in their last report surprise that corporate officers of the highest reputation for honesty will conceal facts, and will destroy vouchers, in order to baffle all efforts looking to investigation. The Commission seems to have come to the conclusion that the

corporate conscience is much less sensitive than the individual conscience.

To investigate the business of several thousand corporations, extending to all parts of the globe, involving annually many millions of dollars, would be a task of immense labor even if the inquiry extended only to books and papers. To go behind the returns would require the constant employment of an army of bookkeepers; it might be even necessary to call out the militia. And then where such tremendous interests are involved, who will guarantee the skill and fidelity of the accountants? *Quis custodiet ipsos custodes?*

The remedy of publicity would only serve to prolong the present situation. And here we are again confronted with the want of state uniformity; while it can hardly be contended that, as matters now stand, Congress has power to pass laws for the investigation of the affairs of corporations organized under the state laws.

Another proposed remedy is the modification of the tariff laws as far as they affect prices of commodities sold by the trusts. This would open the trusts to the competition of the foreign markets; and to that extent it would place a limit on the power to raise prices. It would not, of course, affect all the trusts; and hence it would be inadequate, though it might prove very useful.

Another remedy suggested is an amendment to the federal constitution giving power to Congress to control all corporations; a very drastic remedy indeed, one that would greatly strengthen the lobby, one that might introduce an era of political corruption hitherto unknown.

Lastly, it is suggested that the federal constitution should be so amended as to enable Congress to prevent by appropriate penalties the slugging of rivals by local underselling, by "factor's agreements" and by similar devices. This would not prevent the investment of large sums in corporate hands; and corporations with large capital would still have an advantage; but laws of that kind would no doubt be rigidly

enforced by the juries of the country; and public sympathy in favor of new and struggling enterprises would probably go a long way to redress the balance.

Great hope was entertained of the Sherman Act at the time of its passage; but you who have carefully read the opinions of the Supreme Court of the United States in the cases of the *United States vs. E. C. Knight Co.*, 156 U. S. 1., and *Addyston Pipe Co. vs. United States*, 175 id. 211, will agree that it does not meet all of the difficulties of the situation. Whether that act exhausted the powers of Congress over the subject matter is a question about which there may be a difference of opinion.

PRIMARY ELECTIONS.

Several of the states are still wrestling with the problem of primary elections. Some of us can remember when, many years ago, books and pamphlets were published recommending as panaceas for all of our political ills, minority representation and primary or nominating elections, which, as asserted, would eliminate both the political boss and the political demagogue.

As to minority representation, it was not very clear how, as elections are held for the very purpose of silencing minorities, any advantage could be gained by perpetuating minorities in the representation. Accordingly experiments along that line have proved to be unsatisfactory. As to primary elections some intelligent observers are of the opinion that, so far from doing any good, they only make matters worse. The objections are that they prolong the strife of a political contest; that they involve much additional expense: that they tend to increase fraud and corruption; being held in the bosom of a single political party whose members are not inclined to reveal party secrets; that by substituting a house to house canvass for a free and open public discussion they lead to an ignoble political scramble, rife with personalities, misrepresentation and slander, thus lowering the political level, and exclud-

ing many persons from that active participation in the elections which would be beneficial to the public; that, so far from obstructing the political boss and the political demagogue, they open a field peculiarly suitable for their capacity, and for the exercise of their favorite methods; and that one of the effects, if not the purpose, of the primary elections is to head off the independent candidate; whereas, when the party machine has done its worst, it sometimes happens that the independent candidate affords the only hope of rescue from a public calamity.

I express no opinion on the subject; but it is difficult to see why the boss and the demagogue, when active and efficient in a single election, should throw up their hands at the prospect of a double election.

When Lord Byron was asked what was the best form of government, he answered that they were all so bad that it was hard to say which was the worst. Certain it is that none of them live up to their ideals. *We* believe, however, that a representative form is the best. Its theory is that as men in their private affairs usually—all things being equal—choose the best tailor, the best shoemaker, the best lawyer and the best doctor they can get, having regard not only to their knowledge and their skill, but also to their honesty, they will use like discretion in choosing their political agents. In practice the rule does not always work out in that way; and men who are notoriously unfit, sometimes through party management and a desire to reward party services, at times of a reprehensible character, are elected to positions of great responsibility. If the theory on which our form of government is based was carried out, the official representatives would be greatly superior to the average constituent; but it often happens that he is greatly below the average both in respect of competency and integrity.

It is sometimes said that every people has as good a government as it deserves; and this is true of all that are free. The evils that impair the successful operation of our governments, both state and federal; are deep-seated; as we frequently see in

the government of our cities; and quack expedients, dealing with surface indications, cannot be relied on to do any good. "Therein must the patient minister to himself."

THE INITIATIVE AND REFERENDUM.

A clamor is made in some of the states for what is called the initiative and the referendum—an idea borrowed from Switzerland, whose thinly-inhabited cantons hardly equal our counties in wealth or population. We have always had the initiative, since a proposed law must be very absurd and hopeless if no member of the legislature can be induced to present it for legislative action.

The referendum we have always had; for if any law is objectionable, the voters can always choose representatives who are pledged to its repeal. This would seem to be quite sufficient without authorizing insignificant minorities to keep alive unending controversy and clamor by a factious and impotent resistance inimical to our form of government, which rests on the will of the majority of the people for the time being; not that majorities are infallible, but because public questions must be settled in some way, and because, as a general rule, majorities are more likely to be correct than minorities.

POPULAR ELECTION OF UNITED STATES SENATORS.

Several of the states have recommended an amendment to the federal constitution requiring senators of the United States to be elected by popular vote. This is one of many signs of distrust of our legislative bodies. There is probably no very valid objection to this change, as it is clear that since the rise of political parties, the device of a secondary body of electors, though well suited to the time when the federal constitution was framed, serves at present no useful purpose; as we see in the case of presidential electors, who no longer act on their unbiased judgment, but under a political pledge imposed when they were nominated for that position. But it is by no means sure that the election of senators by popular vote will confer

any great benefit, seeing that it cannot be easily explained how the same voters, who cannot elect good representatives in the state legislatures, can be confidently expected to elect good senators.

CODIFICATION.

Maryland provides for the appointment of three members of the bar to revise the laws relating to corporations, to provide a general system for their formation, defining their duties, powers and obligations, with details regulating the general method of conducting their operations, remedies for abuse, measure and increase of their powers, methods of dissolving them, for the service of legal process on them and embodying all provisions proper for a complete system of incorporation law. As the act includes corporations of "all lawful descriptions," it seems to embrace municipal corporations.

Massachusetts directs the governor to appoint a committee of three persons to examine and consider the state laws in relation to the formation, taxation and conduct of all corporations, foreign and domestic, except municipal, banking and public service corporations, and to determine what legislation, if any, is necessary to make the relations existing between the commonwealth and corporations more advantageous to it and to the public interest.

New Jersey has adopted a code of proceedings for the Chancery Court. It contains one novel provision, as follows: "The Court of Chancery may send any matter of law to the Supreme Court for its opinion to be certified thereon." Appeals are allowed from any order of decree.

New York adopts a complete code of procedure for the Municipal Court of the city of New York, composed of 366 sections.

In New Jersey the committee appointed to revise and codify the general laws are directed to report to the legislature such further bills as may be prepared by them.

THE LAW'S DELAY.

Several of the states have recently passed laws intended to accelerate proceedings in the courts, and to hasten the trial of causes. For some years there was much complaint at our meetings of the law's delays; but the evil has been largely overcome by the creation of intermediate courts of appeal. The passage of the act establishing federal circuit courts of appeal has relieved the Supreme Court of the United States of a hopeless burden; but this remedy has brought with it another evil in adding to the already swollen stream of our case law. The difference between theory and practice is well exemplified by the fact that though our constitutions declare that the three departments of government shall be kept distinct and separate, yet the courts have made most of the existing laws and still continue the same function. So true is this that some of our law schools teach legal science almost exclusively from the decisions of the courts. Mr. Chief Justice Holmes, of Massachusetts, in his interesting treatise on the common law of England, has shown that very much of that law has grown up around the distinctions maintained in common law actions—distinctions established by the courts. It is evident that if our case law should be abolished we should have comparatively only a few disconnected pillars and a few broken arches to declare where our temple of jurisprudence formerly reared its vast, intricate and imposing fabric.

INCREASE OF LAW BOOKS.

Mr. Bryce, in an interesting paper on the territorial expansion of the Roman and the English common law systems, has defined the present boundaries of each; but he says nothing about the ubiquity and the diffusiveness of the civil law.

The first encroachment of the Roman law in England is involved in mystery. The remoteness and intimacy of this early assimilation is well exhibited in our trial by jury, which antedates authentic judicial history. Trial by jury is of Ger-

manic origin; but in ancient Germany the jury were judges both of law and fact; and our separation of the functions of judge and jury is borrowed from the Roman law. In this respect we are more Roman than the modern civilians.

The earliest writers on the English common law, Glanville, Fleta and Bracton, prove that there was already a strong infusion of Roman law in the English system. To account for this circumstance some writers have supposed that the civil law, established in England during the Roman occupation of more than three hundred years, was taken over by the Anglo-Saxon invaders; but history tells us that in that invasion all of the native Britons were exterminated, except a remnant who took refuge in Cornwall, or in the mountains of Wales, or escaped to their brethren overseas in Brittany; a gruesome story that is powerfully confirmed by the almost total absence of Celtic words in our language, which, like our law, is made up by a fusion of Latin and Anglo-Saxon elements.

Later, and during several centuries, the Roman law was largely imported by the ecclesiastical courts under the guise of the canon law, by the courts of admiralty, and, above all, in a wholesale manner by the court of chancery, until at present perhaps one-half of our system is made up of the civil law. In a wide sense then it may be said that Rome still rules the world from the ruins of the Forum. On the other hand the English common law has made but few conquests abroad, though it has been greatly extended by territorial expansion. In a few instances where the two systems have come into immediate contact, as in Scotland, Quebec and Louisiana, the influence of the common law has made itself visibly felt. Otherwise it has mostly maintained its insular character. Another exception may, however, be noted. Trial by jury is not distinctly an English institution; but France did avowedly borrow it for use in criminal trials. It also borrowed the grand jury; but this was soon discarded.

At present the most vital distinction between these rival systems grows out of our rule of *stare decisis*, which is peculiar

to the common law. In all civil law countries the law has been reduced to a statutory form; and the decisions of the courts are not precedents; they neither add anything to the law nor do they take anything from it. In France there are two annual publications relating to the proceedings in the courts; one giving sketches of criminal and sensational trials, the other consisting of gossip about proceedings in the courts. They both come under the head of light reading, and very light reading at that; and neither ever contains the slightest reference to any principle of law. In the preface to the volume for 1901 of one of the series, called "A Year of Justice," the author begins by saying "The judiciary passes onward and leaves no trace. It has dictionaries, but no annals. No one keeps the journal of the court room."

This is not true of our judiciary, which leaves a thoroughfare compared with which the king's highway is but as a spider's web. There are, of course, many books relating to the civil law; but these are not laws like our volumes of reports; and their use is optional, just as are works on theology to the theologian. The system is far simpler than ours. Gibbon, in his autobiography, tells us that in writing his History of the Decline and Fall of Rome he made his admirable summary of the civil law after studying the Roman Pandects and Digest during one winter. Few persons could accomplish such a feat; but it is thought that two years of study will generally suffice for the acquisition of a fairly good knowledge of the *corpus juris*. The system has other advantages. Arguments are oral; printed or written briefs are rarely used; and cases are speedily disposed of. As the judges write no opinions they have time to read and improve their legal knowledge. Not many books are used in court; but questions of fact are closely argued.

Custom reconciles us to almost anything; and it would reconcile us to this also. To the European continental lawyer nothing seems more amazing than our rule of *stare decisis*, and our endless luggage of cases. "Why," they ask, "should a judge who has decided one case wrongly be obliged to decide the

next one wrongly also, thus making the error of yesterday the law of to-day? Why should he not utilize knowledge continually increased by reading, study and observation?"

Nevertheless much could be said on our side if it was worth while. But as to the discretion used in deciding cases the courts under either system seem to have about the same; for our courts can generally find precedents for almost any proposition; and the civil law courts have no need of precedents.

Our system of laws, the only great rival to the Roman law, is in its origin unique. It has been mostly built up from individual instances, just as the science of therapeutics has been constructed from separate clinical observations; and, like that science, it is fragmentary and disconnected. Though the sources of the civil law were wholly different, most of it being drawn from the edicts of the praetor and the opinions of the great jurists, yet it also, in the course of time, became too immense and too unwieldy for practical use; and hence it had to be condensed and restated. Being a much older system than ours, it has reached a more advanced stage in the process of development; but it cannot be denied that we have come, step by step, to precisely the conditions existing when Justinian and Napoleon severally took the matter in hand. In both instances their work was crowned with such success that for us to say that they acted unwisely would be to indulge in a mere paradox. Such opinions, no doubt, were expressed when their work was being done; but at present they are obsolete.

It is not probable that we shall ever abolish the rule of *stare decisis*, as that would be too revolutionary; and we like to know not only how the judges decide, but the reasons for their decisions. But we might, in some respects, at least simplify the law; which even then, in the very nature of it, must always be a very difficult science. The most serious cause of embarrassment at present grows out of the vast accumulation of law books; and this difficulty is increasing with alarming rapidity. Most of the cases now decided are of no benefit to the law as a science; mere threshing over of old straw; saying again

what has been as well or better said a hundred times before. According to the unchanging law of evolution, the decisions become more and more discordant; and much of the time of the courts is taken up with verbal criticism and unavailing efforts at reconciliation.

With us the books of the law, already overwhelmingly numerous, are increasing with a velocity never before known.

I will take the new German code as a standard of comparison. It contains 2385 sections. Availing myself of a computation made by a friend, I will give some statistics. The American Annual Digest for the last year of its publication consists of two very large volumes, referring to about 29,000 cases, included in 438 reports and reporters, and made up of about 54,000 sections. But the digests are mere indexes. Taking a rather low average, the law reports of that year extend to about 262,000 pages. My young friends just entering the profession no doubt expect to read them all carefully; and they ought to be encouraged in so laudable a resolution. Omitting Sundays, and supposing that they read one hundred pages a day, it will take them only about eight years to read the reports of one year; and, even then, they cannot say that their occupation is gone, because, at the present rate of publication, and at the same rate of one hundred pages per day, they will then have new reports on hand sufficient to keep them employed and interested for fifty-six years; at the end of which time they should be able to stand a good civil service examination on leading principles. They should not, however, quit reading; otherwise they will soon fall behind, so that their ignorance of the law in its later development will be painfully conspicuous. I should say to them, "Think nothing accomplished while anything remains to be done. 'In the bright lexicon of youth there's no such word as fail.' And remember that 'a little learning is a dangerous thing.' You should at least keep up with the reports. In the evenings, after the labors of the court room are over, you can read up

the current English reports; and at odd times you may find recreation in perusing the Year Books."

A desire to simplify the law has fired the ambition of several distinguished rulers. Julius Cæsar had a scheme of that sort in view; but the daggers of Cassius and Brutus prevented. Cromwell cherished a like purpose in which he did not succeed. He dispersed the parliament, he overturned the throne, he cut the king's head off, he gave to England the only written constitution that it ever had, he even called the speaker's mace a bauble; but he could not overcome the stubborn resistance to change of the English bar; and so he said that the sons of Zeruiah were too hard for him, and gave over the effort. Justinian and Napoleon succeeded where others failed; and their several codes constitute their best claims to remembrance. Justinian was a barbarian, and Napoleon had not a drop of French blood in his veins; but each left an eternal legacy in an intelligible body of laws.

In 1866 a commission created by the English parliament was directed to prepare a special digest of three selected branches of the law with a view to ultimate codification; but again the sons of Zeruiah prevailed; and, in 1872, the commission reported that it was not advisable to take action in detail, but that a general compilation of the whole of the law should be made; which, of course, has never been done.

In code making, commercial codes usually appear first on the scene. The German jurist Böchardt published in 1871 a collection of all the commercial codes then in force, each in its own language, with German translations, amounting to forty in number, representing all of the countries of the civil law, Turkey, Japan and various other eastern lands; but not a single English-speaking country was on the list.

You are acquainted with the history of the Negotiable Instruments Law prepared by Mr. M. D. Chalmers, who, on our invitation, has honored us with his presence at our meeting at this time. As the draft of the act commended itself to the legal profession and to the business community as well, it was

enacted as a law by parliament in 1882, and has since been re-enacted by all of the self-governing colonies of Great Britain.

Following this example, the state Commissions on Uniform Laws, aided by our own committee, took up the subject and very carefully compiled our Negotiable Instruments Law along the same lines; and this has already been passed by Congress for the District of Columbia, and in twenty-one of our states,—New Jersey, Iowa and Ohio having passed it since our last meeting,—so that it seems now to be almost sure that it will soon become the law throughout our whole country. Thus, seemingly, the day cannot be far distant when the law relating to this important subject will be substantially the same wherever the English language is spoken; and a vast number of discordant decisions will have passed into oblivion.

To Mr. Chalmers the credit of this great work is mostly due; and by it he has earned an enduring fame commensurate with the immense benefits thus conferred. We are glad to have him with us; and we beg leave to tender him our hearty and respectful congratulations on his splendid victory over obstacles to which many others succumbed.

Whatever hindrances may be in the way of codification,—and there are many,—I think that most lawyers recognize that it is the goal towards which we are inevitably tending. There seems to be no other refuge from the riotous and confusing pandemonium of cases. Writing more than fifty years ago Mr. Spence said: "What may be effected when some modern Tribonian shall appear, with the capacity and the power of compiling from the now almost countless volumes of the law a rational and uniform system of jurisprudence, unfettered by merely casual and technical principles, it would be idle at present even to hazard a conjecture."

Perhaps it might be better to adopt the ideas of the opportunist in reducing to a code form those branches of law that are most amenable to that treatment; and thus to proceed by regular gradation to those that are more difficult. If we wait for the future Tribonian whose imperial grasp will enable him

to cover the whole ground in one successful and comprehensive effort, it is probable that no one of us will live to be able to say "*nunc dimittis*."

I think that we are all agreed that whatever is to be done in the way of simplification should not be entrusted to the *doctrinaire*, who, disregarding the continuity of legal history, will seek to introduce conceptions of his own in place of principles long established and generally approved; but that it ought to be a practical work of collaboration, intended merely to restate the law with the greatest possible clearness, and to arrange it in such manner as will make it most intelligible and will render it most convenient for daily use. These requirements, so well exemplified in the Negotiable Instruments Law, though homely and unaspiring, would seem to be indispensable.

THE POWER OF THE UNITED STATES TO ACQUIRE AND GOVERN TERRITORY.

ANNUAL ADDRESS BY

JOHN G. CARLISLE,
OF NEW YORK.

Mr. President and Gentlemen of the American Bar Association :

Not having the honor to be a member of this Association, I esteem it a very great compliment to be invited to attend your meeting and take some part in its proceedings, and I shall endeavor to show my appreciation of the compliment by interrupting your regular and more important business for as short a time as possible. Long speeches and addresses are always wearisome to the speaker and generally not very agreeable to his audience, especially upon such occasions as this, when many gentlemen are to be heard and many matters are to be disposed of during your brief session.

The phenomenal commercial, industrial and political activities of the wonderful era in which we are living have presented so many great legal questions for the consideration of the bench and the bar that no one man can reasonably hope to become familiar with all of them, or even to study any one of them sufficiently to justify him in assuming that he can discuss it in a satisfactory manner before such a distinguished body of lawyers as compose the American Bar Association and its guests ; and for a long time after accepting your kind invitation to be here to-day, I was unable to determine what subject to talk about, but finally concluded that I would present some views on the power of the United States to acquire and govern territory.

I state the subject in these broad terms, although my remarks will be confined principally to the questions growing

out of the recent acquisitions from Spain by the treaty of Paris. But the questions thus presented are of general and permanent importance, because whatever is the law now applicable to those acquisitions must continue to be the law hereafter as to all future acquisitions unless the constitution shall be changed, which is not very probable. It is evident that whatever the treaty-making power could constitutionally do and whatever Congress can constitutionally do with respect to those territories and their inhabitants, the treaty-making power and Congress may constitutionally do hereafter with respect to all future acquisitions of territory from a foreign country. Whether the territory acquired is located in the eastern or the western hemisphere the law is the same. While the questions of policy and expediency may be different, the questions of power to acquire and to govern are the same, no matter where the territory may be located. This being the case, I felt that you would excuse me for presenting some thoughts upon the subject, notwithstanding it has been ably and elaborately discussed at previous meetings of the Association. Whether we ought or ought not to retain the Philippine Islands permanently is a political and partizan question which cannot be appropriately discussed here, and I shall express no opinion on it. The only question I will present is, What are the limitations upon our power to acquire and govern territory under our constitutional system of government and the principles upon which it is founded—and I will not detain you even to discuss that question in all its aspects.

The power of the United States to acquire territory by conquest, by cession and by discovery and occupation is now settled beyond controversy. This power, at least in the cases of acquisition by cession and by conquest, is derived from the Constitution and is implied from the express delegation of power to declare war and make treaties, or, as has been sometimes intimated, from the power to admit new states into the Union. But, if it is to be implied only from the latter power, it would seem quite reasonable to hold that it could be exer-

cised in any case only for the purpose of creating a new state out of the acquired territory, and there would be no power to govern it except for that purpose; but the right of Congress to admit the acquired territory as a state or states, or to refuse to do so, according to its own judgment and discretion, is universally admitted, and, therefore, it would seem to follow that the power to acquire and govern cannot be derived from the power to admit, for, if it did, all territory acquired by either of the methods stated would have to be converted into a state or states. It may be said that no territory ought to be acquired which cannot be ultimately fitted for admission as a state or states—but that is a political and not a judicial question. Certainly the fact that it is not fitted or cannot be fitted for admission as a state constitutes no reason for holding and governing it outside of the Constitution.

The right to acquire territory by discovery and occupation is not an incident to the power to declare war or make treaties, for it has no connection with either of those powers. It is a right which, according to international law, belongs to every independent and sovereign nation, and the only ground upon which it can be supported is that when one such nation has discovered and permanently occupied uninhabited or uncivilized territory, previously unknown, and has established its exclusive jurisdiction and authority over it, no other member of the family of nations has a right to question its title or possession. This is so because no other member of the family of nations has itself any right to the territory or any right to exercise its own jurisdiction over it, and it therefore belongs, according to the law of nations, to the dominions of the discoverer and occupant and must be represented by it for all international purposes. Whether such territory becomes at once an integral part of the new owner in a domestic sense, so that its constitution of government and its laws will be applicable to it without special legislation or other appropriate action by the competent authority, is a question which need not be discussed, because, in the present

condition of the world, it can be of no practical importance. It may be said, however, that, if the discovered country is uninhabited, the discoverer is at once invested with the title and ownership of all the land within its limits and may dispose of it as it chooses; and, if it is inhabited, it becomes at once invested with the title to all lands not at the time of the discovery the subject of private ownership, and may assert its jurisdiction for all governmental purposes over the people, in accordance with its own constitution and system of government. It could not rightfully, after its jurisdiction has been established, violate or pervert the fundamental principles of its own government for the purpose of controlling either the land or the people, no matter how they have been acquired. If it has power to do this temporarily, it may do so permanently, and thus change the character of its own government to that extent by a mere acquisition of territory, however insignificant it may be. I do not speak, of course, of the government or control of barbarous or uncivilized people who may be found in the discovered territory, whether they have at the time tribal governments or usages or not, for no civilized state has ever recognized such a people as having the intellectual or moral capacity to discharge the obligations of citizens or subjects under a regular and orderly government.

Not only is the right to acquire territory universally admitted, but the right to govern it after its acquisition is also conceded. Whether this right to govern is implied from the power to acquire, or from the power to admit new states, or from the fact that the territory is under the jurisdiction of the United States and not within the jurisdiction of any state, or from that clause of the Constitution which provides that Congress shall have power to dispose of and make needful rules and regulations respecting the territory or other property of the United States, appears not to have been definitely settled by the decisions of the Supreme Court. But, to whatever clause or principle the power is traced, it is derived from the Constitution, which is the source of all federal governmental

power, and it must, therefore, be exercised in accordance with the requirements of that instrument. I do not believe the power to govern people, the power to tax them, to take their property for public use, to regulate their social and domestic relations, to prescribe their political rights and privileges and control their affairs generally, as a state controls the affairs of its inhabitants, is conferred by that clause of the Constitution which authorizes Congress to dispose of and make needful rules and regulations respecting the territory, or other property, of the United States. People are not property, and the words, "territory, or other property, of the United States," do not include them; and recent opinions delivered by the Justices of the Supreme Court do not indicate that a majority of its members would be willing to rely upon this clause as the source of the power to govern.

It seems to me that the power to govern territory must be implied from the power to acquire it by conquest or cession, for by these two modes of acquisition the jurisdiction of the former sovereign is at once terminated, and both the land and the people are brought within the dominion of the United States, and jurisdiction must be exercised over both in order to protect the rights of the government and provide for the peace and security of the inhabitants.

The power to acquire and the power to govern being admitted, the great practical question, the question of enduring interest and importance, is whether the conceded power to govern is at any time absolute and arbitrary for any purpose, or is limited and controlled by the Constitution from which it is derived. No one disputes the proposition that when territory is acquired by conquest, the President, as commander-in-chief of the army and navy, may continue to hold and govern it through the military authorities until such time as Congress can exercise its jurisdiction. If the title acquired by conquest is confirmed by a treaty of cession, as was the case at the close of the war with Mexico and the late war with Spain, the government established during the

military occupation may continue until Congress can legislate; but, on the ratification of the treaty of cession, it ceases at once to be a military government and becomes a *de facto* civil government, although administered by the military authority. This temporary government is administrative, not legislative. It is in the nature of a local police government, and its functions are to preserve order, protect the lives and property of the inhabitants and preserve the interests of the United States until the constitutional authority of the proper civil agencies can be established by Congress. It would be a reproach to our free institutions to say that such a self-constituted government could be permanently maintained anywhere within our dominions or under our jurisdiction, and that it could forever define its own powers and prescribe the mode in which they should be exercised. Although we have just such a government in full operation to-day in a large part of our recently acquired territory, I do not propose to discuss that subject on this occasion, my purpose being to confine my remarks, as closely as possible, to the question of congressional power, for, as already stated, that is the enduring and important question.

In its ultimate effects upon the character of our government and political institutions, a proper decision of this question may prove to be of more importance to the future people of the United States than any judicial decision ever rendered, except only that great judgment pronounced nearly a hundred years ago which finally established the authority of the judiciary to declare an act of Congress null and void because inconsistent with the Constitution. That judgment forever silenced the claim of congressional omnipotence for any purpose in the states, and this will forever silence it in all territory within our dominion and jurisdiction.

Before proceeding to discuss the question of congressional power to legislate over acquired territory, it is important to ascertain as nearly as we can what is the present state of judicial opinion upon the subject; and, in attempting to do this, I

will confine myself to the utterances of the members of the Supreme Court of the United States in the most recent cases that have come before that tribunal. In the so-called Insular Cases, the questions presented for decision, so far as they involved the constitutional power of Congress to legislate for acquired territory, arose under the act of April 12, 1900, providing a civil government in Porto Rico, and imposing imposts, duties and excises upon merchandise brought from the island to the states and other territories for sale or consumption, and taken from the states or other territories to the island for sale or consumption. The concrete question was whether such imposts, duties and excises were uniform throughout the United States, and that, of course, necessarily involved the question whether Porto Rico was or was not a part of the United States within the meaning of that clause of the Constitution which expressly requires such uniformity; and, if it was a part of the United States, whether Congress was bound by that provision when imposing imposts, duties and excises for national purposes on goods imported into the states from the island or exported from the states to the island. But the arguments at the bar and the opinions delivered by the several justices took a much wider range, and the whole question of constitutional power over the territories was elaborately discussed. The question whether Congress could constitutionally impose import duties or export taxes upon articles of commerce because they were carried for consumption or sale from one part of the United States to another part of the United States, even though they might, in fact, be geographically uniform, was also presented and discussed.

Five justices held that when the treaty was ratified, the United States being then in possession, Porto Rico and the Philippines became domestic territory; that they could not be foreign for one purpose and domestic for another; that a territory ceded to and in the possession of the United States cannot remain foreign for any purpose, and, therefore, the tariff act in force at the date of the ratification, which imposed duties upon

goods imported from foreign countries only, ceased to be operative as to goods brought here from those islands. They also held that the authority to collect duties in Porto Rico on goods sent there from the states and other territories ceased upon the ratification of the treaty until Congress had legislated upon the subject. Four justices dissented, upon the ground that Porto Rico and the Philippine Islands did not become domestic territory within the meaning of the revenue laws until Congress had, by proper legislation, made those laws applicable to them. In another case a majority of the court, although holding that Porto Rico was not a foreign territory or country, sustained the constitutionality of the act of April 12, 1900, imposing what were called import duties on goods transported to the states and other territories from Porto Rico; but the reasons given for this conclusion are so diverse and conflicting that I am unable to discover a concurrence of opinion by the entire majority upon a single essential point in the controversy. Four of the five justices who concurred in this conclusion and in the judgment of the court, held that the treaty-making power was not competent to incorporate acquired territory into the United States so as to make it a part of the United States without the express or implied consent of Congress; that even though a treaty might contain a provision incorporating it, Congress could repudiate such provision without repudiating the cession itself, and thus prevent it from becoming a part of the United States in a domestic sense; that the late treaty with Spain did not purport to incorporate Porto Rico and the Philippine Islands into the United States, nor did the act of Congress under consideration purport to do so, but both showed a contrary intention; that, nevertheless, the cession of the title, accompanied by delivery of possession, brought the territory and its inhabitants at once within the exclusive dominion and jurisdiction of the United States, and Congress, therefore, had the right to govern it under the power derived from the Constitution; that Congress, in legislating for it, both before and after the incorporation, was limited and con-

trolled by all the provisions of the Constitution that were applicable to a territory in that condition ; and that after the incorporation, when the territory had become part of the United States, Congress possessed no constitutional power to impose imposts, duties or excises upon goods coming from it to the states or other territories, or going from the states or other territories to the island, but that, as Porto Rico was not now a part of the United States, neither the uniformity clause nor any other constitutional limitation upon the power of taxation was applicable, and, therefore, the act imposing the duties in controversy was valid. Upon the question as to the source of the power of Congress to govern the territories, this opinion of the four concurring justices was very explicit. Among other things, they said :

“ In the case of the territories, as in every other instance when a provision of the Constitution is invoked, the question which arises is not whether the Constitution is operative, for that is self-evident, but whether the provision relied on is applicable.”

And again, after stating certain propositions, they said :

“ From these conceded propositions it follows that Congress in legislating for Porto Rico was only empowered to act within the Constitution, and subject to its applicable limitations, and that every provision of the Constitution which applied to a country situated as was that island was potential in Porto Rico.”

One of the five justices who constituted a majority in this case held that Porto Rico was not foreign but domestic territory, but he held that it was not a part of the United States within the meaning of that clause of the Constitution which required all imposts, duties and excises to be uniform throughout the United States, as that clause related only to the states composing the Union ; that constitutional limitations, express

or implied, upon the power of Congress did not apply to the territories or restrain Congress in legislating for them until such time as that body might see proper to extend it to them and thus voluntarily restrict its own power. He expressed the opinion that when Congress had thus, by an act of legislation, restricted its own power over a territory, the act was irrevocable; that it could not thereafter repeal or modify the act and wholly or partially resume its original authority.

From the conclusion and judgment in this case, four justices dissented upon the grounds that upon the ratification of the treaty Porto Rico became a part of the United States in a domestic and constitutional sense; that Congress derived all its powers from the Constitution, and, when legislating for a territory, was controlled by its limitations as well as by its prohibitions; that the power to impose imposts, duties and excises for national purposes and to regulate commerce between different parts of the United States was expressly conferred by the Constitution and could not be exercised under the implied power to govern territories; that the uniformity clause of the Constitution applied to the whole United States, to the territories under their jurisdiction as well as to the states; that the power to regulate commerce extended to the whole United States and must be so exercised as to secure uniformity in the regulations, and that Congress could not constitutionally impose duties or taxes upon goods carried from one part of the United States to another for sale or consumption.

We must not confound the meaning of the word "incorporate" as used by the four concurring justices with the meaning of that word as it has heretofore been used when speaking of the incorporation of a territory into the Union as a state. What they mean is, not the creation of a state or its admission into the Union, which all admit Congress alone is competent to do, but simply an act making the territory a part of the United States in a domestic sense, or within the meaning of the Constitution.

After the judgments to which I have referred were rendered, another case was decided, in which the question was whether the tax or duty imposed by the act of Congress upon goods shipped from the states to Porto Rico for consumption or sale was a tax on articles exported from a state, and, therefore, prohibited by the Constitution. A majority of the court, the same majority that had united in the conclusion that the duty imposed on goods brought from Porto Rico into the states was constitutional, held that the tax or duty on articles shipped from the states to Porto Rico was not an export tax prohibited by the Constitution; that "imports" and "exports" within the meaning of the Constitution, were articles brought from foreign countries into the United States and articles sent from the United States to foreign countries, and that the prohibition upon the power to tax articles exported from the states therefore applied only to such articles as were sent from the states to a foreign country; and that Porto Rico was not a foreign country or foreign territory, and the tax or duty was therefore valid. Four justices dissented on the ground that, although Porto Rico was not foreign, but was domestic territory and an integral part of the United States, the constitutional provision prohibited any tax upon an article "exported from a state," no matter what its destination might be.

The full significance of these judgments will be realized when it is remembered that not only had the territory been ceded to the United States by a treaty, but that Congress had assented to the treaty by appropriating the money to pay for it, and had, in addition, established a territorial government for Porto Rico. The same act which imposed the duties in controversy in the cases, provided a civil government for that Island, with legislative, executive and judicial departments, and for the appointment by the President, by and with the advice and consent of the Senate, of a governor, secretary, attorney-general and other executive officers. It provided for a legislative assembly, and required all laws

enacted by it to be reported to the Congress of the United States, which reserved the power to annul or amend them; and except, as otherwise provided, and except also the internal revenue laws, the statutes of the United States, not locally inapplicable, were to have the same force and effect in Porto Rico as in the United States. A district court of the United States for Porto Rico was established, with a judge to be appointed by the President, by and with the advice and consent of the Senate, and it was provided that writs of error and appeals might be taken to the Supreme Court of the United States from the final decisions of the Supreme Court of Porto Rico, and from the final decisions of the District Court of the United States "in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question, and the right claimed thereunder is denied;" and, in addition to this, all officers authorized by the act were required to take an oath to support the Constitution of the United States. These provisions would seem to indicate very clearly that the Constitution was supposed to be in force there. Besides, the United States Commissioner of Navigation was authorized by the act to make regulations for the nationalization of all vessels owned by the inhabitants of Porto Rico on the 11th day of April, 1899, the date of the ratification of the treaty, and for the admission of such vessels to the coastwise trade of the United States. In a case arising under the compulsory pilotage laws of New York, the Supreme Court of the United States has unanimously decided that "trade with that island is properly a part of the domestic trade of the country, since the treaty of annexation, and is so recognized in the Foraker Act," and it therefore held that the statute of New York, which applied only to vessels engaged in foreign trade, did not apply to vessels trading with Porto Rico.

Thus this territory was as completely organized, and subject to the jurisdiction of Congress and the jurisdiction of the Supreme Court, as Arizona or Oklahoma, or any other district

ceded or annexed since the foundation of the government, and what has been done there might, therefore, have been done with equal authority in legislating for each of the previous acquisitions. It could have been done throughout the whole period of their territorial existence, and if the power of Congress exists to the extent now asserted, duties may be imposed upon goods brought into the states and other territories from Porto Rico and the Philippine Islands, and upon goods going from the states and other territories to those islands, whenever and for as long a time as Congress chooses. In fact, such duties are now imposed and collected on merchandise going to and coming from the Philippine Islands under an act passed last March.

The practical result of the diverse reasons upon which the concurring justices based their conclusions is precisely the same, for it is wholly immaterial whether a territory is a part of the United States, but not entitled to the benefit or protection of the Constitution in matters of national taxation and regulations of commerce until Congress voluntarily confers it upon them by an act of legislation ; or whether it is not a part of the United States, but is subject to the exclusive jurisdiction of Congress, but, nevertheless, is not entitled to the benefit or protection of the Constitution in these respects until Congress voluntarily incorporates it into the United States. According to both views, Congress, in legislating for the territory on these subjects, is not restrained by the limitations of the Constitution unless it has previously determined that it will restrain itself, which, of course, leaves the whole question as to the measure and extent of its powers over these subjects in its own hands as long as it chooses, for, under our system of government, there is no power anywhere, except the ultimate power of the people, to compel it to put the Constitution in force by either of the modes indicated ; and the people who possess that power are not the people over whom this unlimited legislative authority is to be exercised.

It is not denied by anybody that when the title to territory is acquired by treaty and permanent possession is taken it

passes at once out of the dominion and jurisdiction of its former sovereign and into the dominion and exclusive jurisdiction of the United States. It only confuses the question and diverts attention from the real issue to say that the Constitution at once extends itself, or does not extend itself, over acquired territory. The Constitution does not expand or contract with the enlargement or the diminution of our national boundaries, but the authority of the governmental agencies created and provided for by it exists everywhere within our boundaries, and the character of that authority is not changed by a change of boundaries. Nor does the Constitution itself change, but the territorial jurisdiction exercised under it is enlarged or curtailed when the territory within which it exists is enlarged or diminished. What is the nature and source of that jurisdiction? Under what authority do the United States govern any territory or any people at any time or place? Has the legislative department of the United States any authority whatever over any subject except such as is conferred upon it by the Constitution, and can it exercise that authority for any purpose or in any manner not permitted by the Constitution? Can any other department or agency of the government exercise any powers except such as are derived from the Constitution or are conferred upon it by laws enacted in pursuance of the Constitution? There was a time not very long ago when it was supposed these questions could be very easily answered. We had not then heard that any of the powers of the United States, when employed in the exercise of jurisdiction over their own territory or their own people, were derived from the law of nations or the usages and customs of other governments, despotic or otherwise. It seems in the highest degree unreasonable to say that the authority of Congress to govern acquired territory is derived from the Constitution, and to assert, at the same time, that it can exercise that authority upon any subject within that territory without regard to the limitations and prohibitions contained in that instrument, and, consequently,

many of the ablest advocates of unlimited congressional power have felt constrained to look for the source of the power outside of it; but I am sure neither the legal profession nor the people at large will ever accept that view. The conviction that the government of the United States can exercise no power over the persons or property of the people within its jurisdiction, except such as is conferred upon it by an express grant contained in the Constitution or reasonably implied from a grant, is unalterably fixed in this country, and it cannot be changed at this late day by any arguments based upon considerations of expediency or necessity. That the power to govern a territory is derived from the Constitution has been so often decided by the Supreme Court that I doubt whether it would even permit the question to be reargued.

Of course, the founders of the Constitution might have provided that Congress should possess absolute and unlimited power over all territory and people within the jurisdiction of the United States, but outside the boundaries of the states; but they did not see proper to do this. Their purpose was to establish a free republican form of government for the whole country, and they made a written constitution creating legislative, executive and judicial departments, vesting all legislative power in the Congress and carefully enumerating and limiting the powers of that body. These limitations are inseparably connected with the grants of power, and wherever the powers extend, the limitations accompany them and qualify them. The distinction attempted to be taken between the obligatory force of absolute prohibitions upon the power of Congress and the obligatory force of limitations and qualifications imposed by the Constitution upon the exercise of its powers over a particular subject cannot, in my opinion, be sustained by any sound process of reasoning. It is true that there is a difference in degree between an absolute denial of all power to do a particular thing and a grant of power to do that thing to a limited extent only, or in a prescribed manner only; but the absolute prohibition and the express or implied

limitation are equally obligatory upon Congress. It is bound to obey both or its act is void. When a power is granted with a limitation upon its exercise, or is qualified by a rule or clause prescribing the manner in which it shall be exercised, there is necessarily an implied prohibition against its exercise to any greater extent or in any other manner; or, perhaps, it would be more accurate to say, that in such a case there is no grant of power except to the extent or upon the conditions stated, and, under our federal system, Congress can no more exercise a power not granted than it can exercise one that is positively prohibited. In fact, some, at least, of the express prohibitions were unnecessary, because the character of the government created by the Constitution is such that if they had been omitted the prohibited things could not have been done by any of its agencies. To say that Congress, in legislating for a territory, is not bound by the constitutional limitations upon a granted power, but is or may be bound by the express prohibitions, is simply to assert that all parts of the Constitution are not of equal force and effect as restraints upon legislation, and that a power not granted may be constitutionally exercised if it is not expressly prohibited, a theory which, if sanctioned by the judiciary, would at once revolutionize the government. It would no longer be a government of enumerated and delegated powers, but would possess the whole mass of sovereign power which is now vested in the people, subject only to the comparatively few express prohibitions.

The material questions upon which there was not a concurrence of opinion by the majority of the court relate, first, to the time when the Constitution begins to be operative in an acquired territory, and in limiting the power of Congress in legislating for it; secondly, as to the manner in which it becomes operative; and, thirdly, as to the extent to which it is effective after the jurisdiction of Congress has been subordinated to it. As already stated, four justices held steadily throughout the judicial discussion that the Constitution

became effective as a restraint upon congressional power, and must be applied, in determining the validity of its acts, as soon as the acquisition was completed by the cession and occupation of the territory; one held that it became effective only when Congress, by an act, made it applicable to the territory; and four held that it became operative as soon as the territory was acquired, but that certain important provisions were not applicable until Congress, by some appropriate action, had incorporated the territory into the United States, which, I respectfully submit, is precisely the same thing, in effect, as to say that as to those provisions it is not in force, for I am unable to see how a provision of the Constitution or a statute can be in force in a particular case, or in a particular locality, when it is not applicable to that case or in that locality. At any rate, the result of the judgments rendered by the court in the several cases is, that after the territory has been acquired by the United States, after it has entirely ceased to be foreign, and after the exclusive jurisdiction of Congress has attached and has been actually exercised, there is a period, the length of which is to be determined by Congress itself, during which constitutional provisions and limitations do not control that body in legislating upon the great and important subjects of taxation and the regulation of commerce, although the taxation and commercial regulations may directly and materially affect the people of the states as well as the people of the acquired territory. Eliminating from the discussion all the reasoning by which the conclusions were reached, some of which would seem to lead logically to much broader results, this is the very least effect that can be attributed to them; and, surely, this is of sufficient importance to challenge the attention of the bar and people of the country. Now, whether this unlimited power over these subjects can be exercised by Congress because the Constitution is not in force, as was held by one justice, or whether it is in force, but its provisions on these subjects are not applicable, as was held by four justices, is

entirely immaterial, for, in either case, the extent of the power is the same. It is not a difference in substance, but only a difference in the forms in which the proposition is stated.

It is too plain to require discussion that a statute imposing duties or taxes on goods coming to the states from a territory, or on goods going from the states to a territory, or a statute regulating in any other mode the commerce between the states and a territory, affects the states and their citizens in the same way and to the same extent that it affects the territory and its inhabitants. Such statutes do not constitute mere local or territorial legislation. They are as general and national in their character and effect as laws imposing tariff duties on goods imported from foreign countries, or laws regulating commerce with such countries. The duties or taxes imposed must be paid in the states as well as in the territory, and the commercial regulations must be complied with in the states as well as in the territory. The power of Congress to impose local taxes for local purposes in the territory, and to regulate the internal commerce of the territory, is not disputed, but the judgments referred to go very far beyond this.

Upon the theory that the territory is an integral part of the United States in an international sense, though not so in a domestic or constitutional sense, but is within the exclusive jurisdiction and dominion of the United States, or, upon the other theory that it is domestic, but that the Constitution is not in force in the territory until Congress chooses to make it applicable, does it follow that Congress may legislate upon certain subjects for the states and their people without regard to the limitations of the Constitution? How does the fact that the Constitution has not been extended to or over a territory by either of the modes indicated enlarge the power of Congress in the states? If it shall be said that so long as the territory has not been incorporated into the United States, Congress may treat it as foreign if it chooses, and may, therefore, affect the states in its legislation on the subject of taxa-

tion and the regulation of commerce between it and the states to the same extent and in the same manner as if it were, in fact and in law, a foreign country, the answer is that, if the territory is considered or treated as a foreign country, Congress could not constitutionally legislate for it at all, for it would be beyond its jurisdiction; and, besides, a majority of the court has held that it cannot be foreign for one purpose and domestic for another. Moreover, eight justices have held that our domestic jurisdiction attaches and is complete as soon as the territory is acquired by the ratification of the treaty, and that, thereafter, the constitutional limitations limit and control Congress in legislating for it, though four of the eight held that certain of its provisions were not applicable until the territory had been incorporated into the United States. All admitted the complete and exclusive jurisdiction of the United States over the territory, which is incompatible with the idea that it is foreign for any purpose, and no one of them asserted in terms that the power of Congress within the states was either enlarged or diminished by the condition of the acquired territory, though one of the judgments necessarily affirms that proposition.

But the great questions which seem to be still open for discussion are, when does the Constitution become fully operative as a limitation upon the power of Congress in legislating for acquired territory, and when it has taken effect, does it limit and restrain the power of Congress as to all subjects over which it has jurisdiction affecting the territory alone, or affecting both the territory and the states? To say that a particular provision of the Constitution is not applicable to a territory is, it seems to me, equivalent to the assertion that it has no power to legislate for it on the subject to which that provision relates, because it is asserted by the almost unanimous voice of the court that all governmental power is derived from the Constitution. That being the case, where the Constitution does not apply, the power does not exist. If Congress possesses the power to impose imposts, duties and excises

within any part of our dominion for national purposes, or power to regulate commerce carried on between a territory and a state, these powers must be exercised according to the Constitution. There is no other authority for their exercise. The imposts, duties and excises must therefore be uniform throughout the United States, and the commercial regulations, whatever they are, must be in harmony with the commercial regulations adapted for all other parts of the country.

The question then is, when does a territory acquired by conquest or cession become part of the United States in a domestic and constitutional sense, and can it remain foreign for the purpose of tariff taxation and the regulation of commerce, or for any other purpose, after its acquisition?

The treaty ceding Porto Rico and the Philippine Islands contained no condition affecting the title or jurisdiction of the United States. It was an absolute and unconditional cession, and an absolute and unconditional relinquishment by Spain of all her dominion and jurisdiction over the islands. It is admitted by everybody that a treaty made in pursuance of the Constitution is the supreme law of the land upon the subjects to which it relates. Congress, it is true, may enact legislation inconsistent with it, and thus supersede it by a later supreme law of the land on that subject; but, until it has been thus superseded or annulled, it requires no support from congressional legislation to make it the supreme law. It is supreme in the same sense as a constitutional act of Congress on the same subject would be supreme. If the treaty-making power accepts an absolute and unconditional cession of territory and the dominion and jurisdiction over it, the effect must be just the same as if Congress had accepted it. To deny this proposition is simply to say that while territory may be constitutionally acquired in the exercise of the treaty-making power, yet the treaty by which it is acquired is not the supreme law of the land on that subject. Speaking on this very question,

the majority of the Supreme Court said in one of the recent cases :

“Territory thus acquired is acquired as absolutely as if the annexation were made, as in the case of Texas and Hawaii, by an act of Congress;”

and, in a case decided many years ago, the court said, referring to the treaty with Mexico :

“After the ratification of the treaty, California became a part of the United States, or a ceded or conquered territory.”

In several cases the court has held that immediately after the conquest of California, which was nearly two years before the treaty of cession, the Constitution took effect there, which certainly implied that the territory became a part of the United States, for the Constitution cannot extend beyond the United States; and, in another well considered case, it was said that, as a matter of course, all laws, ordinances and regulations of the former sovereign in force at the time of the conquest or cession of the territory, in conflict with the political institutions and Constitution of the new government, are at once displaced. This could not possibly be true in the case of an acquisition by the United States, unless our Constitution took effect there at the time of the conquest or cession.

But, in fact, Mr. Chief Justice Marshall, long ago in the celebrated case from Florida, said that :

“Territory ceded becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession, or upon such as its new master may impose.”

And we may, therefore, I think, safely say that the question as to the time when a ceded territory becomes, in fact and in law, a part of the United States had been judicially settled before the late cases were presented to the court. The language used by Chief Justice Marshall in that case affords no support to the contention that the United States can impose

any terms upon the people of an acquired territory, either by the treaty acquiring it, or after its acquisition, except such as are consistent with the Constitution. He was stating the general rule of international law applicable to all independent states acquiring territory, and he stated it correctly of course, but he did not intimate that any terms could be imposed by the treaty, or by the subsequent action of the acquiring nation, that were not authorized by its own system of government. What he said was as applicable to Russia or China as to the United States, and I scarcely think it would be contended that we could do with respect to acquired territory and people what those absolute governments might do. The true rule was stated by the Supreme Court in the case of *Pollard's Lessees*, when it said that

“Every nation acquiring territory by treaty or otherwise, must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it.”

But, while the treaty-making power may extend the boundaries of the United States and make the acquired territory a part of the United States as fully and completely as Congress itself might do, it has no more power to insert an unconstitutional provision in a treaty than Congress has to insert such a provision in a statute. It cannot, by the terms of the treaty, confer upon Congress any power that is either denied to it or not delegated to it by the Constitution, and hence, if the clause in the late treaty, which provides that:

“The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress,”

is to be considered as an attempt to confer upon Congress greater power over those subjects than it would otherwise have possessed under the Constitution, it is utterly void. But we are not at liberty to attribute to the treaty-making power a

purpose to alter the Constitution by either enlarging or diminishing the powers of Congress, unless the provision is so plain as to admit of no other construction. Spain had a right to insist upon a stipulation for the protection of her own subjects, natives of her dominion which was not ceded, who might choose to remain residents of the ceded territory, but her consent that the Congress of the United States should possess at any time greater legislative authority over the ceded territory or its inhabitants than was conferred by our own Constitution cannot be of the least consequence. If there had been no such clause in the treaty, Congress could determine the civil rights and political status of the inhabitants, but it could do so only in the exercise of such constitutional power as it possesses over the subjects; and that is all it can do now.

But it is said that an intention to exclude the Constitution from the Philippine Islands, and not make them a part of the United States, is shown by that article in the treaty which stipulates that Spanish ships and merchandise shall be admitted to the ports of the islands for a period of ten years from the date of the ratifications, on the same terms as ships and merchandise of the United States. One of the justices, in announcing the conclusion and judgment of the court, in speaking of this stipulation, said it was:

“A clear breach of the uniformity clause in question and a manifest excess of authority on the part of the commissioners, if ports of the Philippine Islands be ports of the United States.”

Without attempting to discuss the question as to the proper construction or legal effect of this clause of the treaty, I respectfully submit that it cannot be accepted as evidence of an intention to exclude the ceded territory from the United States for any purpose, but, at the very most, could be regarded only as a concession of this privilege to Spain as a part of the consideration for the cession; or as a reservation of the privilege by Spain in making the cession. That government did

not reserve dominion or jurisdiction over any port or place in the islands for any purpose, but simply stipulated for a commercial privilege for the benefit of its subjects. It was a mere agreement or compact like the agreement or compact to pay twenty million dollars for the territory. Of course, the treaty-making power could not appropriate the money to make this payment, and it is, to say the least, a serious question whether the clause referred to could become operative without the sanction of legislation, as it is inconsistent with the general laws of the country on subjects over which Congress has, under the Constitution, exclusive control. In fact, it is a serious question whether Congress itself could enact a statute giving it effect without a violation of that part of the Constitution which requires all indirect taxation to be uniform throughout the United States—that is, that the same article shall be subject to the same rate of duty at every place where it is found in the United States. Whether Congress can, by authorizing the negotiation of treaties of commercial reciprocity in the first instance, or by assenting to the terms of such treaties after they have been made, impose lower rates of duty upon articles coming from a particular country into all the ports of the United States, than are imposed upon the same articles coming from other countries not parties to the treaty, is a different question from the one presented by the late treaty with Spain. But whatever may be the correct solution of these questions, I cannot see in the clause referred to any evidence of a purpose to prevent the Philippine Islands from becoming a part of the United States. If such was the purpose, and if it is effective, those islands cannot become parts of the United States and entitled to the protection of the Constitution in matters of taxation and commerce for a period of ten years after the ratification of the treaty, unless Congress shall by an act disregard the treaty and incorporate them into the United States.

The fifteenth article of the treaty by which Florida was acquired from Spain in 1819 expressly stipulated that during a

period of twelve years Spanish vessels laden with productions of Spanish growth or manufacture, and coming directly from the ports of that country, or its colonies, should be admitted to the ports of Pensacola and St. Augustine, the only ports then in the territory, without paying other or higher duties on their cargoes, or of tonnage, than would be paid by the vessels of the United States; and in 1821 Congress passed an act to carry this provision into effect. But, notwithstanding this clause in the treaty and this act, Chief Justice Marshall held, in the celebrated *Canter* case, that the cession itself made that territory a part of the United States, and he had previously held, in the well-known case of *Loughborough vs. Blake*, that the territories were parts of the United States within the meaning of the uniformity clause of the Constitution, which included the states, the territories and the District of Columbia.

What I am insisting upon is that when a territory is ceded and possession is taken, it becomes at once a part of the United States for all purposes, domestic and international. There are provisions in the Constitution which apply only to the states as such, or to the citizens of the states as such, and those provisions are not operative in a territory and do not limit and control Congress in legislating for it. They are not operative because the subjects to which they relate, or the conditions to which they apply, do not exist there; but all those provisions which confer upon Congress power to legislate for national purposes, whether with or without qualification, are effective throughout the whole dominion of the United States where there are people to be governed, and, when that power is exercised anywhere within their jurisdiction, it must be executed in accordance with the Constitution. The persons or things to be taxed and the commerce to be regulated exist in a territory as well as in the states, and the rights of persons to their lives, liberties and property are the same in the territories as in the states.

Whether we agree to it or not, we can all understand the proposition that the Constitution was made only for the states, and that, of its own force, it has no application to a territory. It is very simple, and, if it could be established, it would put an end to the controversy, but it would also put an end to the constitutional power of Congress to govern a territory, because that power would not be included in any of those delegated to that body. All its powers would be confined to the states. No power to govern a territory could be implied, because, according to this theory, it would be inconsistent with the very purpose for which the Constitution was made, and we would, therefore, be in the awkward position of possessing the power to acquire territory, but without power to govern it unless immediately admitted as a state. This proposition must be qualified by its advocates, at least to the extent of admitting that there is some part of the Constitution which expressly or by implication confers power to govern territories. If they claim to find it, as counsel for the government claimed in the argument in the *Insular Cases*, in that clause which authorizes Congress to dispose of and make needful rules and regulations respecting the territory, or other property, of the United States, the answer is, first, that the Supreme Court declined to sustain that contention; and, secondly, that whatever may be the purpose or meaning of that clause, it is clear it would not authorize Congress to lay imposts, duties and exercises for general national purposes upon goods taken from a territory to a state, or from a state to a territory, nor to regulate commerce between a territory and a state in any other manner. It would, therefore, not accomplish the chief purpose for which the unlimited power of Congress in these respects is now claimed. Nor can such unlimited power be deduced from the implied power to govern a territory, whatever may be the express grant from which it is supposed to be derived, because, whatever may be its source, it is only a power to govern territories and their inhabitants, not a power to govern the states and their people. The latter

power is plainly delegated and carefully limited in the Constitution.

The conclusion that the Constitution is not operative in a territory, and that Congress is not controlled by it until it has in some way legislated over the territory, or over itself, is, of course, the necessary result of the contention that it was made by the states and for the government of the states alone. That contention has been disposed of so often by the Supreme Court and by so many different and eminent justices that I will not attempt to discuss it here. One thing, however, may be said—if the Constitution has to be legislated into a territory, it goes there as an act of legislation pure and simple, and may be legislated out again by the same or any succeeding Congress. No Congress can bind its successors by a statute, nor can it even bind itself, but it may repeal a law wholly or partially whenever it chooses. This is a fundamental principle underlying the constitutions of all legislative bodies. The power to repeal laws is necessarily as broad and as absolute as the power to enact laws.

The powers of Congress over the persons and property of the inhabitants of a territory are not greater, or in any respect different, from its powers over the persons and property of the people who are inhabitants of or sojourning in a state, except that it may regulate all their internal affairs and tax them for local purposes, which it cannot do in the states. The question of citizenship which has been injected into the discussion of this subject, has really no logical connection with it, for the nature and extent of the power of Congress to govern acquired territory under the Constitution does not depend in the least upon the question whether its inhabitants are or are not citizens of the United States. All persons within the jurisdiction of the United States, whether they are citizens or friendly aliens lawfully domiciled or sojourning here, and the property of all such that may be located or found within that jurisdiction, are entitled to exactly the same constitutional protection. A Chinaman, if lawfully here, although he is not a citizen and

is expressly prohibited from becoming a citizen, is protected in his person and property to the same extent as the most distinguished citizen of the republic. If he is unlawfully deprived of his liberty, or if his property is taken from him for the public use without just compensation, or if he is compelled to pay an impost, duty or excise that was not imposed uniformly throughout the United States, or is injured by the enforcement of any regulation of commerce that is not authorized by the Constitution, he has all the remedies that belong to a citizen ; and so have the civilized native inhabitants of Porto Rico and the Philippine Islands, whether they are citizens or not. Of course, members of barbarous or uncivilized tribes inhabiting acquired territory may be governed and controlled in the same way that we have, ever since the adoption of the Constitution, governed and controlled the same classes of people found in our original dominion and in the territories acquired from France, Spain, Mexico and Russia. The civil rights and political privileges of the civilized native inhabitants of the late acquisitions do not depend in the least upon the question of citizenship as long as they remain under the government of Congress. The right to vote is not conferred upon anyone by the Constitution of the United States, in the states or elsewhere, and Congress is not required by the Constitution to confer that right upon a citizen of the United States in a territory ; nor is it precluded from conferring it upon persons who are not citizens. The very act before the court in the recent cases conferred the right of suffrage upon the native inhabitants of Porto Rico, although Congress evidently did not recognize them as citizens of the United States, and it authorized them to vote in the election of important officers to participate in the government of the territory ; and the act just passed by Congress to provide for the administration of civil affairs in the Philippine Islands will, when it takes effect, confer the same right upon large classes of native inhabitants of those islands.

I do not think there is much reason to apprehend that what may be called the fundamental and essential rights of

person and property, or the freedom of speech, or religious liberty, or any other of the great franchises or immunities intended to be recognized and protected by our Constitution, will ever be destroyed or seriously impaired by legislation in the territories or elsewhere in this country. There is nothing in the decisions actually made in the recent cases to alarm us on this subject, though there is much in some of the reasoning which might, if followed to its logical results, weaken the foundations upon which these great rights have heretofore been thought to rest for their security. What the judgments really accomplish, if they are accepted as final settlements of the question involved, is the destruction of the revenue and commercial unity of the republic, and in doing this they, of course, leave Congress free to impose unequal burdens and restrictions upon the people in different parts of the country. They sharply present the question whether we are to have one government and one country for all national purposes, or whether we are to have for certain purposes a legislature with two separate and distinct kinds of power over the same subjects within the states, as well as within the territories. As to all indirect taxation, the Constitution expressly requires it to be uniform throughout the United States, and the delegation of power to regulate interstate commerce, while not expressly requiring the regulations to be uniform, necessarily implies that they shall be so. The nature of the subject to which the power relates is such that it cannot be effectively or justly exercised without substantial uniformity. Commerce is a unit and exists in every part of the country ; and it cannot be regulated in one part without affecting all other parts. Trade between the several states and territories and the District of Columbia is just as much a part of interstate commerce within the meaning of the Constitution as trade between the states alone ; and, in fact, it is impossible to regulate it in all cases between the states, without also regulating it between them and the territories. The trade, intercourse and transportation which constitute

interstate commerce cannot be confined either to the states alone or to the territories alone. The articles to be carried and the agencies that carry them must often pass through a territory in order to go from one state to another, and so they must often pass through a state in order to go from one territory to another. Shall it be said that in regulating this great national interest, Congress can, without disregarding the spirit and purpose of the Constitution, make different rules and regulations for the commerce between each territory and all the states, or different rules and regulations of commerce between all the territories and each one of the several states? During a period of more than one hundred and ten years under the Constitution, no such thing was ever suggested, so far as I know. During that entire period no attempt was ever made to impose a tax or duty upon merchandise because it was carried for sale or consumption from a territory to a state, or from a state to a territory. Of course, this does not prove that it cannot be constitutionally done, for a governmental power is not lost by non-user; but it shows how all the statesmen of the past have understood and practically construed the constitutional provisions on these subjects. During that period we have acquired territory on this continent many times as large as our whole area at the time the Constitution was adopted. A great part of it was inhabited at the time of its acquisition by people who could not speak or understand our language, and who were ignorant of the character of our political institutions, but no claim was made that for these or for any other reasons we had power to govern them outside of the Constitution, or that we could constitutionally treat them as foreign for any purpose after they had been brought within our dominion and subjected to our jurisdiction. No claim was made that they could be taxed for national purposes, except to the same extent and in the same manner that all others were taxed; nor was any claim made that commerce between them and the states could be regulated by different laws or rules than were applied in the regulation of commerce between the states themselves.

As members of the legal profession, charged in some measure with the duty of assisting in securing a correct interpretation and administration of constitutional and statutory law, we cannot look with indifference upon this new departure in our legislation. With the mere political and partizan aspect of the subject, we, as lawyers, can have no concern, but we are profoundly interested in every question relating to the construction and practical application of the fundamental law of the land by the legislature as well as by the judiciary, and when a new question arises we owe it to ourselves and to those who have a right to depend upon us for advice and assistance to investigate it as thoroughly and impartially as we can; and after we have reached our conclusions, it is our duty to state upon all proper occasions the reasons upon which they are founded. Our respect for the judgments of the Supreme Court and for the individual opinions of the distinguished jurists who compose it, is not in the least diminished by the fact that we are not always able to appreciate the full force of the reasons given in their support. But whether we are or are not able to appreciate the reasons upon which a judgment is founded, that great tribunal is, under our system of government, the final arbiter on all questions of constitutional law, and the judgment itself is conclusive, not only of the rights of the parties to the particular case, but on all the questions necessarily involved and upon which there is a concurrence of opinion by a majority of the court. If there is no such concurrence of opinion upon any question which is so material that it must be decided in a particular way in order to sustain the conclusion reached, I think that question is still open for further consideration by the court itself, and certainly that the conclusion is not absolutely binding upon any other department of the government when called upon to act according to its own judgment and discretion in the exercise of its own powers over subjects committed to its jurisdiction. The subject out of which these questions arise is within the exclusive control of Congress in the first instance, and that body

must therefore take the initiatory step by legislation or no occasion for judicial action can be presented. It may be that the researches and arguments made by the legal profession now while the question is a practical one and is directly effecting the interest and engaging the attention of the public, will have some influence hereafter in case an attempt should be made to repeal the existing legislation or to adopt new legislation of the same character on these important subjects. I submit, therefore, that the discussion is neither useless nor improper from any point of view, and that the members of the American Bar Association, whatever may be their individual opinions, will render a great service to their own profession and discharge a high obligation of citizenship, by assisting their fellow countrymen in all proper ways and on all proper occasions, in reaching such a solution of the question as will be consistent with the letter and spirit of the Constitution and in harmony with the highest material and political interests of the Republic.

CODIFICATION OF MERCANTILE LAW.

BY

M. D. CHALMERS, C. S. I.,

PARLIAMENTARY COUNSEL TO THE TREASURY (ENGLAND).

Gentlemen of the American Bar Association:

I have to thank you sincerely for inviting me to address you on a subject which for many years has engaged my interest and attention. Though I am a stranger to you personally, I cannot feel myself a stranger in a strange land when I am addressing an assembly of brother lawyers in the country where Chief Justice Marshall and Mr. Justice Story delivered their judgments, where Chancellor Kent wrote his Commentaries, and where Mr. Justice Oliver Wendell Holmes penned his admirable essays on the common law. Whether we be American or English lawyers, we have in the common law the same foster mother, and from that foster mother we have both alike imbibed the principles which guide us in the practice of our profession. Though I am a strong advocate of codification, I am no disparager of the common law, which is unsurpassed for its collection of reasoned principles and applied precedents. Every American or English code must pre-suppose the common law. I think you may compare a code to a building, and the common law to the atmosphere which surrounds that building, and which penetrates every chink and crevice where the bricks and mortar are not. We cannot escape from the common law, and we should not try to do so. As Mr. Justice Holmes has well said, "However much we may codify the law into a series of seemingly self-sufficient propositions, those propositions will be but a phase in a continuous growth. To understand their growth fully, to know how they will be dealt with by judges trained in the past which the law embodies, we must ourselves know some-

thing of that past. The history of what the law has been is necessary to the knowledge of what the law is." (The Common Law, p. 27.) The learned judge's words are weighty ones, and they suggest an important principle to be followed by those who would codify any branch of the law. While any branch of the law is in process of formation, it is unwise to attempt to codify it. A code should be founded on a firm basis of experience. You then know what you are doing. A practical and working code cannot spring from the head of the draftsman, as Pallas Athene is fabled to have sprung, fully equipped, from the head of her father Zeus. In legislation, as in other sciences, the "a priori" road is a dangerous one to tread. When the principles of the law are well settled, and when the decided cases that accumulate are mere illustrations of accepted general rules, then the law is ripe for codification. A code can usefully settle disputed points, and fill up small lacunæ in the law, but it should always have its feet on the ground. If you go above and beyond experience, you are codifying in the air, and will probably do more harm than good to commerce and mercantile law. No service is done to the cause of codification by putting the case for it too high. The province of a code, I venture to think, is to set out, in concise language and logical form, those principles of the law which have already stood the test of time. It co-ordinates and methodizes, but does not invent, principles. Compare for a moment a proposition of law where there is a code and where there is none. In the case of a code the propositions of law are stated in the authoritative words of the legislature. When a particular case arises, the sole question is whether it falls or does not fall within some given statement in the code. The process of reasoning is purely deductive, and the code supplies the major premiss in the syllogism. In the case of uncoded law, when a lawyer has to advise, or a court has to decide a given point, two processes of reasoning have to be gone through. The decided cases have to be examined, and from the more or less sufficient data which they give, a general

proposition has to be framed. This is an inductive process, which must precede the deductive process. The inductive process has to be gone through afresh each time a question of law has to be determined, for however correctly the general proposition may have been framed, the words in which it is formulated have no authority. On the one hand, no doubt, there is the advantage that the language of the proposition can be adapted to the particular facts, but on the other hand, it is obvious that there is a greatly increased chance of error in formulating the proposition.

As the Bills of Exchange Act of 1882 was the first successful attempt to codify any branch of English commercial law, it may possibly interest you to know the procedure which was adopted in preparing the measure. The idea was suggested to me by my experience of the working of the Indian Codes, particularly the Indian Penal Code of 1860. I therefore set to work to frame a Digest of the law on the lines of an Indian Code, and published it as a text-book. The frame of an Indian Code is as follows: First of all, the general propositions are stated in sections as in an ordinary statute. Qualifications which in an ordinary statute are inserted as provisos are called and drafted as "exceptions." If the propositions involve any complication, they are followed by illustrations which are part and parcel of the act itself. This is a peculiar feature of Indian legislation, which owes its origin to Lord Macaulay. It works well in India, where law has to be administered largely by judges and advocates who are not trained English lawyers. But I do not think it is a good precedent for legislation elsewhere, for it holds out almost irresistible temptations to loose thinking and loose drafting. When, as often happens, the draftsman comes across a proposition which is difficult to formulate, he is apt to frame it in terms which are not accurate, and which have to be controlled and modified, instead of being merely explained, by illustrations. But the illustrations can hardly be exhaustive, and then difficulties of interpretation arise in practice. For a

preliminary Digest, however, the Indian Code form is a very convenient one. You see at a glance the tests and proofs of abstract propositions. When I had examined the English reported cases, and roughly digested them, I found what any student of the common law would expect. On some points, and not always on important points, there was a plethora of authority. On other points, authority was wanting, or spoke with an uncertain voice. A good many propositions in the Digest had to be qualified with a "probably" or "perhaps." As Lord Macnaghten had pointed out in a recent case, the more obvious a proposition of law may be, the more difficult it is to find direct authority for it. It is not litigated, and it is assumed rather than stated in the reported judgments. But it is essential that a code should explicitly state the fundamental principles of the law. The next step, therefore, was to test the validity of the doubtful propositions, and to fill up lacunæ, by reference to American decisions and the continental codes and text writers.

The weight to be given to American decisions in England is well stated by Lord Chief Justice Cockburn in the case of *Scaramanga vs. Stamp* (1880) 5 C. P. D., at p. 303. After remarking that the point for decision was one of first impression, he proceeds to say, "I am glad to think that in laying down the rule we had the advantage of the assistance afforded to us by the decisions of the American courts and the opinions of American jurists, whom accident has caused to anticipate us on this question. And, although the decisions of the American courts are, of course, not binding on us, yet the sound and enlightened views of American lawyers in the administration and development of the law—a law, except so far as altered by statutory enactment, derived from a common source with our own—entitle their decisions to the utmost respect and confidence on our part." I presume that in the States somewhat similar weight is attached to English decisions in matters of mercantile law. Lord Mansfield and Mr. Justice Story, in judgments which are too well-known to

need citation (see *Swift vs. Tyson*, 16 Peters 1), have emphasized the essential unity of the law merchant throughout the world, and, in more recent times, Lord Blackburn has again enunciated the rule. "There are," he says, "in some cases differences and peculiarities which by the municipal law of each country are grafted on it, but the general rules of the law merchant are the same in all countries. We constantly, in the English courts, upon the question what is the general law, cite Pothier or any foreign jurist, provided they bear upon the point" (*M'Lean vs. Clydesdale Banking Company* [1883] 9 App. Cas. at p. 105). In attempting to frame a Code of any branch of mercantile law, comparison with foreign laws is an essential branch of the operation. It not only enables you to fill up gaps and to form an opinion on doubtful propositions, but it enables you to see what are the really fundamental propositions of your code, which require to be put in the forefront. When a principle is reproduced in the laws of all commercial nations, you may be sure that it is founded on good sense and based on broad grounds of expediency. The Roman lawyers were justified in attaching a peculiar value to those rules of law which were *juris gentium*.

My next step was to publish the Digest, and get it criticised as far as I could. The result encouraged me to throw the propositions of the Digest into the form of a Bill, which Lord Herschell steered through Parliament, and which became law as the Bills of Exchange Act 1882. If I could do the work over again, I could produce a better Act, and I am glad to see that you, in your Negotiable Instruments Act, which has now been adopted by so many states, have in many respects improved on the English measure. Still, the English Act, during its twenty years of life, has, on the whole, worked very smoothly, and has given rise to very little judicial decision. The most important of those decisions, curiously enough, have arisen on the few amendments which were introduced in Committee. The effect of turning a text-book into a statute was curious. In the next edition which I published, the text was hardly

altered, but the legal value of the propositions laid down and the illustrations which followed them was exactly reversed. In the text-book, the propositions were only law in so far as they were correct and logical inductions from the decided cases: the illustrations drawn from decided cases were authoritative. But as soon as the statute passed, the general propositions became the law, and the illustrations drawn from decided cases were only law in so far as they were correct and logical deductions from the language of the Act. None the less is it useful to the legal reader to call his attention to the decisions which form the basis of the various sections, and which were intended to be reproduced in the Act. In so far as the law is unaltered, the decided cases are still in point as illustrations.

In dealing with the law of sale, I followed a similar procedure, and again, with Lord Herschell's assistance, we succeeded in passing the Sale of Goods Act 1893. I am now following a similar plan with regard to Marine Insurance, which is an excellent subject for codification, as it rests mainly on well established principles, worked out by the courts with very little interference by the legislature. The Bill has passed the House of Lords, but has stuck fast in the House of Commons, where there is increasing difficulty in passing any measure of law reform.

I hardly know the trend of opinion in the States, but in England I think you may say that mercantile opinion is in favor of codification, while legal opinion is rather against it. Perhaps, then, I may briefly examine the arguments for and against codification from the English point of view. The mercantile view is this: "Law is made *by* lawyers, but not *for* lawyers; it is made for laymen, who have to regulate the conduct of their business in accordance with the rules laid down by the law." A man of business, in effect, says to the lawyers, "Leave me free to make my own contracts, but tell me plainly beforehand what you are going to do if I don't make a contract, or if I fail to express it intelligibly. If I know before-

hand exactly what you lawyers are going to do in a given case, I can regulate my conduct accordingly. All I want to know is exactly where I am." Our great mercantile judges have always kept the mercantile position in view. As long ago as 1776, Chief Justice Willes, in deciding a new point of commercial law, observed that "in all commercial transactions the great object is certainty. It will therefore be necessary for the court to lay down some rule, and it is of more consequence that the rule should be certain than whether it is established one way or the other." (*Lockyer vs. Offley*, 1 T. R., at p. 259.) This is a point of view which is very difficult for lawyers to grasp. The lawyer is thinking, first, of the interests of his own particular client, and secondly, of the nice and exact application of precedents to the particular case he is arguing. The fact that a decision, equitable in itself, may introduce uncertainty and difficulty into thousands of other commercial transactions, is a matter outside his purview, and with which he does not concern himself. The object of the man of business is, not to get a scientific decision on a particular point, but to avoid litigation altogether. On the whole, he would rather have a somewhat inconvenient rule clearly stated than a more convenient rule worked out by a series of protracted and expensive litigations, pending which he does not know how to act. A judge deciding a disputed question of law always reminds me of a great surgeon performing an operation. The surgeon proceeds calmly with the use of his knife, and pays no attention to the blood which spurts from every vein of the patient on the operating table. So, too, the judge calmly proceeds to apply his precedents to the case before him, regardless of the costs which spurt from every pocket of the unfortunate litigant.

The most serious, but, I think, the most fallacious argument against codification is the stock objection that the common law is thus deprived of its elasticity. In so far as that elasticity exists, it is another name for uncertainty and obscurity. On this point I cannot do better than cite the

authoritative words of the Royal Commissioners on the Criminal Code Bill, who were all great common law judges. Lord Blackburn, Lord Justice Lush, Sir James Stephen and Mr. Justice Barry, in their report made in 1867, say :

“The objection most frequently made to codification—that it would, if, successful, deprive the present system of its elasticity, has, we believe, exercised considerable influence, but when it is carefully examined it will, we think, turn out to be entitled to but little, if any, weight. The manner in which the law is at present adapted to circumstances is, first, by legislation, and secondly, by judicial decisions. Future legislation could of course be in no way hampered by codification. It would, on the other hand, be much facilitated by it. The objection under consideration, applies, therefore, exclusively to the effects of codification on the course of judicial decision. Those who consider that codification will deprive the common law of its ‘elasticity’ appear to think that it will hamper the judges in the exercise of a discretion which they are at present supposed to possess in the decision of new cases as they arise. There is some apparent force in this objection, but its importance has, to say the least, been largely exaggerated. In order to appreciate the objection, it is necessary to consider the nature of this so-called discretion which is attributed to the judges. It seems to be assumed that when a judge is called upon to deal with a new combination of circumstances, he is at liberty to decide according to his own views of justice and expediency; whereas, on the contrary, he is bound to decide in accordance with principles already established, which he can neither disregard nor alter. The consequences of this are, first, that the elasticity of the common law is much smaller than it is often supposed to be; and secondly, that so far as a code represents the effect of decided cases and established principles, it takes from the judges nothing which they possess at present. In fact, the elasticity so often spoken of as a valuable quality would, if it existed, be another name for uncertainty. The great richness

of the law of England in principles and rules embodied in judicial decisions no doubt involves the consequence that a code adequately representing it must be elaborate and detailed, but such a code would not, except in a few cases in which the law at present is obscure, limit any discretion now possessed by the judges. It would simply change the form of the rules by which they are bound. The truth is, the expression 'elasticity' is altogether misused when applied to English law. The great characteristic of the law of this country is that it is extremely detailed and explicit and leaves hardly any discretion to the judges. This may be shown by comparing it with the law of France."

The stock illustration of the effect of a code in arresting the development of mercantile law, which, it is said, ought to be a living and growing body of law, is furnished by the French Code du Commerce. That code, passed early in the nineteenth century, to a large extent reproduced and perpetuated mercantile laws passed in the end of the seventeenth century, when modern commerce was in its infancy. It may well be that France codified her laws at too early a period in her history. But, putting that question aside, let me invite your attention to two other considerations. In the first place, France herself is satisfied with her codes. She may change her political institutions with bewildering frequency, but she ever remains constant in her attachment to her civil and commercial codes. It is only in minute details that she has amended them. But more than that, no country which has codified its law has ever thought of repealing its codes and reverting to the old state of things. That is an argument in favor of codification to which you may apply the test, *quod semper, quod ubique, quod ab omnibus*. In the second place, no code is final. The legislature which enacted it can alter it if it requires alteration. Modern legislatures respond very readily to a stimulus from the outside, and are not, as a rule, overwhelmed with respect for the work of their predecessors. Legislation, it must be borne in mind, is both speedier and cheaper than litigation. The

English law of negotiable instruments took about 150 years to develop. Its main principles were worked out by about 2000 decisions, and taking a moderate estimate, the taxed costs of this litigation must have cost the parties about two million dollars. Judge-made law has certain great merits, but cheapness is not one of them.

Codification of course does not mean the abolition of litigation. Until the millenium arrives, there will always be disputed facts which will give rise to legal contest. Lord Westbury is said to have advised an aspiring junior at the bar in the following terms: "My young friend, in arguing your case, never make a mistake in your logic; the facts are always at your disposal." The object of a code is limited to prevent mistakes in logic. It is no part of its purpose to curb the exuberant imaginations of the witnesses. Moreover, draft a code as carefully as you will, there are certain to be ambiguities and small discrepancies and obscurities in it, which can only be cleared away by judicial interpretation. No code can provide for every case that may arise or always use language which is absolutely accurate. If a code provides a clear rule for a great majority of the cases which crop up in ordinary business, it satisfies the needs of business men. Exceptional cases must shift for themselves.

Lawyers, perhaps, are inclined to attach too much weight to the occasional difficulties which arise in construing a codifying statute. The cases which come before lawyers are just the cases in which the code is defective. In so far as it works well, it does not come before them. Every man's view of the question is naturally coloured by his own experience. In dealing with commercial matters, we, as lawyers, are apt to forget that we see mainly the pathology of business; its healthy physiological action is a matter outside our professional experience. A perfect code is, of course, an impossibility, but in codification, as in other practical matters of life, "*le mieux est l'ennemi du bien.*" If we seek after an impossible perfection, we lose our chance of a practical and positive good which is within our reach.

THE ORIGIN OF MUNICIPAL INCORPORATION IN ENGLAND AND IN THE UNITED STATES.

BY

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“Whoso desireth to discourse in a proper manner concerning corporated towns and communities, must take in a great variety of matter and should be allowed a great deal of time and preparation. The subject is extensive and difficult.”¹

Two opposite views are held in the United States as to the relation of town and state. One is that the state is absolutely paramount; that it created the towns, has absolute power over them and can destroy them—if it pleases; that while it accords to them a certain measure of self-government, it may, whenever the legislature sees fit, take away from them the local self-government it has temporarily allowed. This view has been persistently held in Pennsylvania,² and in the Supreme Court of the United States.³ It has also been maintained in

¹ From the preface to *Firma Burgi*, or an Historical Essay concerning the Cities, Towns and Boroughs of England, by Thomas Madox, London, 1722 and 1726, born in 1666, died in 1727. He studied law, was admitted to the Middle Temple, but was never called to the bar. He studied history under the patronage of Lord Somers, became a legal antiquary and published “*Formulare Anglicanum*,” or collection of antique charters, in 1702, in folio, pp. 441, with a preliminary dissertation on ancient charters replete with erudition “of unspeakable service to our students in law and antiquities.” In 1714 he was sworn in as historiographer royal. In 1722 he published “*Firma Burgi*” in folio, dedicated to George I. The great value of Madox’s labors has been acknowledged by many generations of students of English mediæval history, and his work on the exchequer is frequently quoted by Bishop Stubbs in his “*Constitutional History*.”

² *Philadelphia v. Fox*, 64 Penn. St. 169 at 180 (1870).

³ *United States v. Railroad Co.*, 17 Wall. 322 (1872); *Barnes v. District of Columbia*, 91 U. S. 540 (1875); *Laramie Co. v. Albany Co.*, 92 U. S. 307 (1875); *Mount Pleasant v. Beckwith*, 100 U. S. 514 (1879); *Merewether v. Garrett*, 102 U. S. 472 (1880); *Met. R. Co. v. Dist. of Columbia*, 132 U. S. 1 (1889).

other states,¹ and in other cases cited and examined in the series of articles on "The Right to Local 'Self-Government'" in the 13th and 14th *Harvard Law Review*, and there is danger of its general acceptance as correct.

An examination of these cases will show that in most of them the affirmance of such a general doctrine is merely *dictum*, it not being necessary to the decision of the case actually before the court. It is a dangerous doctrine—one, under color of which politicians, legislators ignorant of constitutional law, even if nothing worse be said of them, and judges accepting it without adequate study of the history and the development of our American colonies, are unconsciously coöperating to deprive our towns and cities, or other units of our political system, of their right to self-government in their local affairs.

The other view is that the American system of government consists of:

First.—(Beginning at the top) the union of the people and states, constituting us a nation.

Second.—The several states, subject to the Constitution of the United States, and to the treaties and laws made thereunder, but sovereign in the sense that each state has control over its own internal affairs, free from interference by the United States.

Third.—The towns and cities, or other units of government, also endowed with a certain limited sovereign power in the sense that while subject to general laws passed by the state legislature and to the right of the legislature to mould² and

¹ *Daniel v. Mayor, &c., of Memphis*, 11 Humph. (Tenn.) 582 (1851); *Montpelier v. E. Montpelier*, 29 Vt. 12, 19 (1850); *People v. Draper*, 25 Barb. 344 (1857); *Mayor, &c. of Baltimore v. State Bd. of Police*, 15 Md. 376 (1869); *State v. Covington*, 29 Ohio St. 102 (1876); *Burch v. Hardwicke*, 30 Gratt. 24 (1878); *Coyle v. McIntyre*, 7 Houst. (Del.) 44 (1876); *State v. Smith*, 44 Ohio St. 348 (1886); *State v. Hunter*, 38 Kan. 578 (1888).

² "The state may mould local institutions according to its views of policy or expediency; but local government is matter of absolute right, and the state cannot take it away." By Cooley, J., in *People v. Hurlbut*, 24 Mich. 44 (1871) at 108.

direct their powers, especially upon their own application as occasion may require, that have a constitutional right, express or implied, to manage their own local affairs free from the interference or control of the legislature. In the language of Webster¹ this is the American system of "the government of a great nation over a vastly extended portion of the surface of the earth by means of local institutions for local purposes and general institutions for general purposes." It is the only system under which, when they are fit for it, we can hope to govern successfully the Philippine Islands.

The problem thus presented is too difficult and complicated for solution, unless we go back to the beginning of Municipal Incorporation in England and ascertain the principles on which it rests.

It may be admitted that some knowledge of the Roman system of incorporation lingered with the ecclesiastics after the withdrawal of the Roman power from Britain. This lingering knowledge and the training in canonical law of the ecclesiastics are enough to explain the continued existence in England, throughout the Anglo-Saxon period, of the incorporation of ecclesiastical institutions. It is suspected that a knowledge of ecclesiastical incorporation had an influence upon the quasi incorporation of guilds, whether they partook of a charitable nature (in providing relief to sick and disabled members) or whether they partook of a business nature (in providing pecuniary benefit to those of the particular craft). This lead finally to the incorporation of trading companies, the immediate predecessors of the charters to the American colonies that afterwards became independent states. But municipal incorporation in England originated in a different way.

A corporation is an imaginary, immaterial, legal entity, with certain powers, rights and duties. It is immortal, unless limited in duration, when created by a formal act.

¹ Speech of Dec. 22, 1843, on "The Landing at Plymouth," 2 Works of Daniel Webster, 207.

The conception of a number of human beings acting in concert for a common end, and thus forming a fictitious entity apart from its members and not limited by their lives, although apparently an abstruse one, has long been common. The familiar and very old conception of village communities, clans, tribes, races and nations furnishes us with illustrations of the existence in human thought of the conception of personified fictitious entities. The fixing of this idea upon a legal basis is the essence of the idea of incorporation—the legal recognition of the immaterial entity, composed of individual members that die, but which continues on notwithstanding their death or withdrawal. The charter, *charta*, the paper, is the written legal evidence of the recognition of the existence of such a body—“*un gros*” or “*un corps*,” whence our word, corporation. It follows that a corporation may exist without a charter. Municipal corporations did long exist in England before they had any charters, and we shall find that the first charters they had, were not grants of original powers, but were confirmations of powers, liberties, franchises and privileges they already had.

Through natural causes population increased in some of the manors of England after the Norman conquest faster than in others, and faster in favored spots in these manors. The feudal service due from each *servus*¹ or serf to the lord of the

¹ “The *servi* or slaves appear to have been the most numerous class, and consisted either of captives taken in war or of persons over whom a property was acquired by other means, and their wretched condition appears from several circumstances. . . . They had no title to property, and receiving nothing but clothes and subsistence. All the profits of their labor accrued to their masters. Nor were they originally allowed to marry, but being encouraged to cohabit together, the children were born to the same base condition as their parents. They were at first sold at pleasure, though afterwards they became *adscripti glebæ* and were conveyed together with the farm to which they belonged.

“*Villani*, or villains, these paid a fixed rent to their master for the land which they cultivated, and enjoyed the fruits of it in property, but were *adscripti glebæ* or *villæ*, from which they derived their name and were transferable with it.” (A new history of London, John Noorthouck, Lon-

manor continued as of old. The increased population in these particular spots became a town or borough¹ (for both words don, 1773, p. 22.) See Pollock and Maitland's *History of English Law*, p. 396. "A free man may hold in villeinage . . . he is not a serf." P. 397. Serfs are employed in agriculture. The lord does not feed nor clothe him. He may be sold as a chattel, though he generally passes from feoffor to feoffee, from ancestor to heir, as annexed to the soil. The lord can set him at any work he pleases. P. 396. The division in later times into "villeins in gross" and "villeins regrardant" was not known in Bracton's time. P. 399. The lord may beat or imprison his serf. His chattels may be taken at any time by the lord. P. 400. If a serf acquires land by free tenure, his lord may seize it. P. 401. Bracton concludes the lord may contract with his serf, as the greater includes the lesser, and he may free him; but this was not held before his day.(?) Then it was held that a covenant with a serf implies a manumission. P. 402-3. The serf is not a true slave for he is treated as free in relation to wrongs, assaults, etc., at the hands of a third person. P. 403. If a lord be distrained, his villein's chattels are first objects of attack. A contract cannot be enforced against a villein.

¹ "The 'burh' of the Anglo-Saxon period was simply a more strictly organized form of the township. It was probably in a more defensible position; had a ditch and mound instead of the quick set hedge or 'tun' from which the township took its name, and as the 'tun' originally was the fenced homestead of the cultivator, the 'burh' was the fortified house and court yard of the mighty man—the King, the magistrate or the noble." (1 Stubbs. *Const. Hist. of Eng.*, 99.) The oldest general account of English boroughs is by Robert Brady, entitled "An Historical Treatise of Cities and Burghs or Boroughs," 1st ed., London, 1690, fo.; 2d ed., 1722, fo., and a later but inaccurate edition in 1777, 8vo. It has value, through the many Latin charters contained in it, extracts from Domesday Book, etc., but it is written in a partisan spirit to justify the arbitrary proceedings against municipal corporations of Charles II. and James II. "This work gained some credit which its perspicuity and acuteness would deserve if these were not disgraced by a perverse sophistry and suppression of truth . . . written to serve the purposes of James II., though not published till after the Revolution, . . . he endeavored to settle all elective rights on the narrowest and least popular basis." (3 Hallam, *Const. Hist. of Eng.* 47. See also Hallam, *Europe, during the Middle Age*. Note, Ed. by Murray); "of little value; displays a partisan spirit." (Gross, *Sources and Lit. of Eng. Hist.*, No. 817, p. 114.) There can be little doubt that Brady wilfully perverted the truth to countenance the pretensions of his royal patrons and to promote their cause. (Gross, *Bib. of Mun. Hist.* XXIII.) He was regius professor of physic at Cambridge, keeper of the records in the tower, the household physician of Charles II. and James II., and member of Parliament in 1681 and 1685. His book has had a greater influ-

ence than any other in moulding public opinion and in diffusing erroneous views concerning the development of towns. "To any one who probes beneath the surface of this book, it is plain that the author wrote in a partisan spirit to uphold the royal prerogative, especially to justify the recent measures of the crown against municipal corporations. Charles II. and James II. had nullified the charters of many towns and had remodelled their constitutions to suit the interests of the crown. The town councils, or select aristocratic bodies, were filled with non-resident royalists who controlled the election of the parliamentary representatives of boroughs. Brady strives to show that municipalities originated in grants of the crown for the benefit of trade; that all their privileges and authority came from the bounty of English Kings; that ever since their foundation boroughs had select bodies (with non-resident members) to which was committed exclusive control of municipal government. Hence the King, their creator, had the right to transform these civic governing bodies to suit his inclination and interest. Thus Brady's object was to influence public opinion on one of the most momentous questions of the day, and he succeeded. His specious arguments helped to give a legal title to the existence of select bodies. They now began to prevail more than ever against the burgesses at large in controverted elections of members of Parliament. (Merewether, *Sketch of Hist. of Boroughs*, 64). Thus Brady, who was keeper of the records at the Tower, in his work on boroughs, written with a particular design, misstated many of the documents he cited. Yet, as they were in his own keeping, he had the ready means of preventing any inaccuracies, had he been desirous of doing it. (Merewether and Stephens on Corps., viii). "Hume, struck with his talents and deceived by his ability, founded his history on Brady's tenets." (Gilbert Stuart, *View of Society in Europe*, 339.) Yet with every predisposition to attribute everything to the King as the source of power, Brady concedes that boroughs "were in *dominio* either of the King or some other lords or patrons in the time of King Edward." (P. 17, ed. of 1722, fol.) In his preface Brady claims his treatise will show that boroughs "*have nothing of the greatness and authority they boast of, but from the bounty of our ancient Kings and their successors,*" thus showing that his object is not to get at the truth but to maintain a stated doctrine. That burghs or boroughs and towns or tuns are essentially the same appears from the fact that both words originally signified a hedge or enclosure, then that which is thus enclosed. He concedes that in the reigns of Edward the Confessor and of William the Conqueror "we find the *burgesses* or *tradesmen* in great towns had in those times their *patrons* under whose *protection* they *traded*, and paid an *acknowledgment* therefor, or else were in a more servile condition as being in *dominio regis vel aliorum*, altogether under the *power* of the *King* or other *lords*, and it seems to me that they *traded* not as being in any *merchant gild, society* and *community*, but merely under the *liberty* and *protection* given them by their *lords* and *patrons* who probably might have

mean the same thing, a collection of habitations enclosed with a hedge or fence).¹ The particular customs and liberties exercised by the inhabitants of a particular town or borough became associated with that particular place. These liberties would naturally differ very much in different places, and this explains the very great differences in these liberties we find in English towns. Through the enjoyment of these liberties the *servus* or serf was raising himself to the condition of the *villanus* or villein, the inhabitants of a villa, afterwards a town. Gradually the feudal service, afterwards the rent, due from each individual tenant in the town, became merged in a sum certain due from the town or borough as a whole, paid to the lord of the manor. This lord might be a layman or an ecclesiastic or even the King himself holding a manor as of his own domain. (His grant through his royal prerogative will be considered separately). To ensure recognition of the right to the continuance of the peculiar customs, liberties, etc., enjoyed by the townsmen, by the lord of the manor, and to ensure the continued payment of the rent due from each town as a whole instead of power from the king to license such a number in this or that port or trading town." (P. 16. Note the word "probably" used here). No one claimed, during all the centuries in which municipal corporations were unconsciously coming into existence, that their liberties, acknowledged or granted in charters from lords of manors, were in reality derived from the King; and not one of all the charters granted for centuries makes any such assertion. But Brady's object being the exaltation of the King's power through depreciation of the powers of lords of manors, by appreciation of the royal power, and by skillful use of probabilities in favor of the King, he succeeded in confirming the erroneous dictum of Coke in the case of Sutton's Hospital that only the King can incorporate. The admission made by Brady in the above quotation that formerly burgesses were under other dominion than that of their King is all the more valuable, coming as it does from a professed exalter of the sovereign power. Madox, *Firma Burgi*, p. 4, is to the same effect: "It is to be remembered that from the time of the *Norman Conquest* downwards, the cities and towns of *England* were vested either in the crown or else in the clergy, or in the baronage or great men of the laity. That is to say, the King was immediate lord of some towns, and particular persons, either of the clergy or laity, were immediate lords of other towns."

¹ Brady on Cities and Boroughs, 2d Ed., London, 1722, p. 2.

from each tenant severally, to the lord of the manor, this lord gave them a charter, confirming the town's customs and liberties, agreeing that they should continue as of old, so long as the stipulated rent was paid. This is fee-farm or farm, the title of Madox's book on corporations, *Firma Burgi*.¹

We are now at the beginning of Municipal Incorporation in England, the first step in which was taken when the first serf became the first villein.² It will be seen, therefore, that, like Topsey, municipal corporation grew; they were self-instituted. There was no conscious intention on the part of anyone of creating corporations, as we understand the term now. The charters thus given were more in the nature of grants upon condition than of absolute grants. They required renewal upon the accession of each new lord of the manor. This explains the constant renewal of these charters to town and boroughs, otherwise inexplicable to those familiar only with corporations of the present day.

During the reign of Ed. I. (1272 to 1307) villeins in the manors of England were bound to render certain stated services only, as recorded in the lord's book; later their children

¹ "This term (fee-farm) has difficulties of its own, for it appears in many different guises. A feoffee is to hold in *feofirma*, in *feufirmam*, in *fei firmam*, in *feudo firmam*, in *feudo firma*, *ad firmam feodalem*, but most commonly in *feodi firma*. The old English language had both of the words of which this term is compounded, both *feoh* (property) and *feorm* (rent). (But the latter seems to be derived from Low Latin, in which *firma* has come to mean a fixed rent or tribute. Skeat, s. v. *farm*). So in the language of France, and in Norman documents the term may be found in various shapes, *firmam*, *fedium*, *feudi firmam*. But whatever may be the precise history of the phrase, to hold in fee-farm, means to hold heritably at a rent. The fee, the inheritance, is let to farm. This term long struggles to maintain its place by the side of *socage*. The victory of the latter is not complete even in Bracton's day. The complete merger of fee-farm in *socage* may be due to a statute of Edward I., though the way for it had long been prepared." 1 P. & M., Hist. Eng. Law 293, 2d ed. (For the co-ordination of fee-farm and burgage with *socage*, see Magna Charta, 1215, C. 37).

² See the cases of the men of Dale, Y. B. 7 Ed. IV., Trinity Term 7 (1468), and of the men of Islington, Dyer 100 (1553), to be examined later.

acquired the right to be entered in this court roll of the lord of the manor upon the same terms as their parents. Eventually they were allowed copies of the terms on which they held their lands. They became thus *tenants by copy of court roll*, and their tenancy was that of copyhold.¹ In some manors it was the custom to allow the heir to succeed the ancestor in his tenure, and the estate was a copyhold of inheritance. In other manors the lords were more vigilant over their so-called "rights," and the tenants had only an estate for life. But though theoretically this tenure was dependent upon the will of the lord, this will was regulated by the custom of the manor, as shown by the roll of the lord's court. Those who rose from the condition of servitude to that of villeinage became finally freemen of the town they belonged to. The distinction between them was that the lord was answerable for his *servi* as well as for his villeins, but the *freemen* were answerable for themselves.² Since then the word "freemen" has changed its meaning, and the change has been productive of much error and confusion.

Villein services, in feudal law, were base or menial services performed in consideration of the tenure of land. The serf (*servus* or slave) and his goods belonged to the lord of the soil. "The villein was not a slave, but a freeman minus the very important rights of his lord."³ "While the churl sunk to the state of villeinage, the slave rose to it."⁴

"By the advancement of agriculture the peasants, in many parts of Europe, had been gradually emancipated from slavery and been exalted successively to the condition of farmers, of tenants for life and of hereditary proprietors. In consequence of the freedom attained by this inferior class of men, a great proportion of them had engaged in mechanical employments,

¹ Stubb's Const. Hist. of Eng., 264; 2 Bl. Com. 95, 147. It is remarkable that Blackstone does not treat of serfs.

² Merewether & Stephens, Hist. of the Boroughs and Municipal Corporations of the United Kingdom.

³ Freeman, 5 Norman Conquest, 320.

⁴ Ibid., 322.

and being collected in towns, where the arts were most conveniently cultivated, had, in many cases, become manufacturers and merchants—being originally the tenants or dependents either of the King or of some particular nobleman upon whose demesne they resided, the superior exacted from them, not only a rent for the lands which they possessed, but various tolls and duties for the goods which they exchanged with their neighbors. These exactions, which had been at first precarious, were gradually ascertained and fixed either by long custom or express regulations. But so many artifices had no doubt been frequently practiced in order to elude the payment of those duties, and as, on the other hand, the persons employed in levying them were often guilty of oppression, the inhabitants of particular towns, upon their increasing in wealth, were induced to make a bargain with the superior by which they undertook to pay a certain yearly rent in room of all his occasional demands, and these pecuniary compositions being found expedient for both parties, were gradually extended to a longer period and at last rendered perpetual. An agreement of this kind appears to have suggested the first idea of a *borough* considered as a *corporation*. Some of the principal inhabitants of a town undertook to pay the superior's yearly rent, in consideration of which they were permitted to levy the old duties and became personally responsible for the funds committed to their care. As managers for the community therefore, they were bound to fulfill its obligations to the superior, and by a natural extension of the same principle it came to be understood that they might be prosecuted for all its debts, as, on the other hand, they obtained, of course, a right of prosecuting all its debtors. The society was thus viewed in the light of a body politic, or fictitious person, capable of legal deeds and executing every sort of transaction by means of certain trustees or guardians. . . . They became, in a word, a species of *socage tenants*, with this remarkable peculiarity in their favor, that by remaining in the state of a corporation, from one generation to another,

they were not liable to the *incidents* belonging to a superior upon the transmission of lands to the heirs of a vassal. The precise period of the first incorporation of a borough in the different kingdoms of Europe is not easily determined, because the privileges arising from the payment of a fixed sum to a superior, in the room of his casual emoluments and the consequences which resulted from placing the revenue of a town under permanent administrators, were slowly and gradually unfolded to the view of the public."¹

For further proof that for many centuries the municipalities of England were in the hands of the lords of the manors and not of the King, except in those manors which he held as of his own demesne,² see Madox, *History of the Exchequer*, 226, as follows: "Another part of the ancient Crown revenue arose out of the yearly farms of towns, burghs and gilds. If I do not mistake, in the most ancient times after the conquest (as far as we can find by records) several towns of England were in the hands or possession of private lords. But of them it is not my business to treat. The towns, burghs and villates of England, which were in the hands of the King, were commonly let to farm."

See also Madox, *Firma Burgi*, 17:

"Several lords of baronies held in demean all the towns, whether corporate or non-corporate, which were within their barone. For example, the town of *Bristou* (Bristol) was part of the ancient *Honour of Gloucester*. The Earles of *Gloucester* held the town *in dominio*; the burgh of *Arundell* was parcel of the *Honour of Arundell*; the burgh of *Walingford* was

¹ *An Historical View of the English Government*, &c. John Millar, London, 1787, folio, p. 378.

² "Ancient demesne, *antiquum dominicum regis*, consists of those manors which (though now perhaps granted out to private subjects) were actually in the hands of the Crown in the reign of Edward the Confessor, and at the accession of William the Conqueror; and so appear to have been by the great survey in the Exchequer called Domesday Book. Fitz H. Nat. Br. 14, 16."

(Bl. *Considerations on Copyholders*, 128.)

part of the *Honour of Walingford* ; and so for the rest. In like manner the Great and Baronial Abbots and Priours commonly held the towns lying within their seignury in demesne. But I forbear to enlarge on this Head."

See further, Willcock on Mun. Corps. 3 :

"In England, many towns were enfranchised and incorporated by the greater barons and many more by the Crown. It appears that at first the right of doing so was in the immediate lord, and not in the King by virtue of his prerogative, for the earliest incorporations by the Kings of England were of towns held in demesne or by tenure in capite, and that every great baron who had towns within his own barony incorporated them at will. The Earles of Cornwall incorporated many towns: West Loe, Truro, Launceston, Liskeard, Bodmin, Lostwithiel, Grampound and others, with franchises similar to those bestowed by the Crown; the Baron of Villa Torta constituted Saltash a corporation; the Earl of Devon incorporated Plympton; John, Earl of Moreton and Lancaster (afterwards King) incorporated Bristol and Lancaster; and John, Duke of Britain and Lord of Richmond, bestowed on Richmond a charter of incorporation and privileges."¹

That charters to towns and boroughs from the lords of manors were not original grants of powers, liberties and immunities, but were rather acknowledgments of "liberties," etc., already won, of existing states of fact with sanction of continued future enjoyment, sometimes with the addition of new "liberties," in consideration of a fee-farm rent, see "The Literature of Local Institutions," Gomme, 1886, p. 65. Ignorance, continued for centuries, of these facts in England's history, or indifference to them through failure to realize their importance, combined with too great devotion to Latinity, to the study of Latin, its language, grammar, history, law and literature, have all combined to foster the underlying principle of the Roman system that all power emanates from the state, and to neglect and even to oblivion of the Teutonic prin-

¹ Brady on Boroughs, where many other instances may be found.

ciple that the central power is derived from the union of local powers.¹ When in England, about 1830, it was deemed wise to foster the development of local powers, the mischievous principle was favored that local powers were originally derived from the central power, instead of which the exercise of local powers should have been looked upon as a return to the former system, as we now know was the case through our better knowledge of the true character of Germanic institution.²

We speak of these early charters as *grants*, but, strictly speaking, the word is inappropriate. For if the lord of the manor granted something to his villeins, burgesses, commonality, etc., when he gave them a charter, so did they grant something in return—a *quid pro quo*—either feudal services or a fee-farm rent. Each householder either paid his share individually, or, at a later date, it was paid collectively by certain men of the town acting for the town, or a lump sum was paid by the town acting collectively for all its householders. The word *grant* is a relic of the old idea that what the lord or the King did was of grace, and therefore subject to revocation at his will. Royal charters read: "We . . . of our certain knowledge, mere motion and special grace . . . grant . . .," etc. It took centuries to evolve the idea of the contractual relation of the parties, and that both are equally bound to carry out their agreement. The Dartmouth College Case³ put private corporations upon this footing in this country, but only because of the inhibition contained in Section 10, Article 1, of the Constitution of the United States. Yet in this very decision, public corporations are excepted. The unjustifiable use of *quo warranto* by the Stuart Kings, to free themselves from the restrictions of the charters that had been granted to English and Colonial corporations, is yet another illustration of the prevalence of the old idea that a charter is only a grant of grace. When Parliament passed a statute taking away some

¹ *Ibid.* p. 2.

² *Ibid.* p. 5.

³ 4 Wheaton 518.

of the chartered rights of Massachusetts, after the passage of the Boston Port Bill, we have still another illustration of the prevalence of this idea.¹

The other and more modern idea is that charter rights are indefeasible by act of the grantor alone.

“In the country from which we derive our ideas on the subject of municipal corporations the charters of cities were, as their name implies, contracts entered into between the corporators on the one hand, and the King or feudal lord on the other, by which liberties and franchises were bartered for personal services or for money. The rights and powers which the charters conferred were of the nature of those secured to the people at large by our constitutions. They were intended to be permanent and could not be lawfully taken away; they were in the true sense of the word, franchises.”²

With progress and development in the true understanding of what incorporation is, there came admission that what had been done, *i. e.*, the granting of charters by lords of manors, was true incorporation. This was repeatedly admitted, as we shall see, by the Kings of England, by Parliament and by the courts. Queen Elizabeth granted more charters of incorporation than any other sovereign, charters that were true charters of incorporation, even if they be judged by the more exact standard of the present time. Hers was the culmination of the course taken by the Tudor Kings in always augmenting the royal power, and in taking away from the power of the lords of manors. It resulted in putting an end to the granting of such charters by lords of manors and in Coke's incorrect dictum in the case of Sutton's Hospital³ that only the

¹ 4 Graham, Col. Hist. of the U. S., 360.

² Reynolds *vs.* Baldwin, 1 La. An. 162 at 167. I must dissent, however, from what the learned Judge says next: “But the relation existing between our municipal corporations and the sovereign is not the same.” This may be true of his state, Louisiana, settled under the Civil law of France and Spain. It is not true of the colonies on the Atlantic coast, settled by Englishmen bringing with them the laws and rights of Englishmen.

³ 10 Co.* 1^a.

King can incorporate. For it should be remembered that that case was one concerning a private corporation, and while it may be true that only the King can incorporate such a body, it by no means follows that only the King can incorporate a municipal corporation. The error arose from Coke's not making any distinction between various kinds of corporations, a distinction not recognized until long after his time. Many of the charters of true corporation to towns and boroughs by Elizabeth and her successors were to towns already furnished with charters by lords of manors, and they state that the town was immemorially incorporated. In many instances the new charter recites and confirms the older charters of the lords of the manor, that is to say, the new charter is but a charter of confirmation. Sometimes the new charter states that the King has inspected the old charter granted by the lord of the manor, and now confirms it. These charters are known as *inspeximus* charters. This is an admission by the sovereign that the earlier charters by the lords of manors now inspected and confirmed (for a further consideration, to ward off attacks upon their liberties under *quo warranto*) had incorporated towns and boroughs, even when judged by the more exact standard of that time and even yet the standard. It was never claimed that true charters of incorporation were now granted because the previous charters of lords of manors had failed to incorporate or because lords of manors had no right to issue charters of incorporation. We may be sure that had the Crown's legal advisers, under the arbitrary and despotic Tudor and Stuart Kings of England been able to advance the theory that the earlier charters granted by lords of manors had failed to incorporate the many towns and boroughs that ever since their receipt of these charters had claimed to be validly incorporated, they would have done so, and would have brought *quo warranto* against those towns in order that the royal treasury might be replenished, without the necessity of summoning Parliament to meet, with the fees that would have been exacted for the illegal course of those towns in falsely calling

themselves incorporated. Judges holding their offices at the will of the King and dependent upon him for their salaries, stood ready to give judgment of ouster in such cases, if by any possibility the law could have been so construed, and sycophantic courtiers, as well as lawyers stimulated by the reward they would have received, were always at hand to attack towns and boroughs incorporated under charters granted by lords of manors, had such a thing been possible. But it was never attempted, and no better proof could be given that it could not be done. Here then is contemporaneous admission that true incorporation had resulted from charters granted by lords of manors.

Admitting the royal power to grant "divers rights and liberties, such as franchises, privileges and immunities, fairs, markets, parks, free warrens, leets and hundreds,"¹ it is by no means true, as the learned editor goes on to say that they "have otherwise no existence and can only be established by royal prerogative." This incorrect statement was probably fostered by the very nature of the collection he was editing, it being a collection of royal charters, and therefore not including other charters. On the same page he says, "The charter rolls are the contemporaneous registers of royal grants of lands, honors, dignities, hereditary offices, liberties and other estates of inheritance to the nobility and commonalty; and of lands, liberties, privileges, immunities and other estates in mortmain to ecclesiastical, eleemosynary and lay corporations."

On the next page he defines charters in their widest significance as "deeds or writings conveying properties or immunities from one private person to another," but in a more limited sense, as "that most solemn species of royal diploma by which powers, privileges, immunities, exemptions and other specialties emanating from the royal prerogative are granted in perpetuity." There is no reason for limiting the meaning of

¹ P. 1 of the Introduction by Thomas Duff Hardy to *Rotuli Chartarum in Turri Londinensi Asservati*, London, 1837.

“charters” in this narrow way, except as a designation of the particular kinds of charters then being edited, and even the first definition is too narrow in limiting charters to deeds or writings conveying properties from one *private* person to another, for this would exclude all royal charters and all ecclesiastical charters by an individual in his ecclesiastical capacity. Considering “charters” as meaning deeds or writings conveying properties or immunities therefore, the observations made upon their nature and classification in this introduction are calculated to throw much light on a little known subject.

Our writer divides charters into charters of lands, tenements and liberties not before granted to the parties and charters of confirmation of grants before made. The first call for no further consideration here, merely pointing out that before the middle of the thirteenth century, royal charters do not differ materially in form from charters of private persons as illustrated by the example given, and that royal charters cease in 1516, according to this writer, “and all the written acts of the sovereign in the nature of grants were thenceforward made in the form of letters patent and recorded upon the patent rolls. (The patents of creation of the nobility retained the formula of charters until about the year 1620).” But there must be some inadvertance in this too broad statement, for Elizabeth issued more charters of incorporation to municipalities than any of her predecessors, and they continued to be issued by her successors.

He divides charters of confirmation into :

“1. Charters confirming previous grants without reciting them.

“2. Charters of simple confirmation without addition of anything new.

“3. Charters comprising both, that is, reciting previous charters and confirming what was previously enjoyed, with some additional grants.”

“ . . . It was the custom of the Roman Emperors to renew grants made by their predecessors. Tiberius ordained

that the grants of preceding Emperors should be of no force under their successors unless they were renewed; a law that greatly contributed to enrich the Imperial treasury at the accession of each prince. Several of the Emperors, however, for instance Titus, Nerva and Marcus Aurelius; contented themselves with confirming, by a single edict, all the benefactions of their predecessors."

"The English custom of renewing or confirming charters to the successors or representatives of the first grantee, by the successors or representatives of the first grantor, seems to have arisen out of a general feeling of the necessity of obtaining from successive sovereigns confirmation of the grants made by their predecessors. This was more especially necessary in times of contention and civil discord, when sovereigns ascended the throne by usurpation and naturally rewarded their partisans and followers with the confiscated estates of their opponents. In such times men could not consider themselves very secure in the enjoyment of property which had, perhaps, been first vested in themselves or their predecessors by some King from whom or from whose descendants the sovereign power had then departed. In unsettled times common prudence induced persons to procure confirmations or recognitions of their rights from the sovereign on the throne, by which means they might entertain hopes of retaining peaceable and quiet possession of their inheritances during his life term at least. The practice of confirming charters was also one of the natural consequences growing out of the feudal law. According to the principles of that law the King was considered supreme lord of the soil, and all persons enjoying its fruits or revenues obtained and held them either mediately or immediately of him. The estate or property of such persons was also deemed in some degree conditional, of which they were liable to be dispossessed upon trivial or even imaginary wrong. Little dependence could therefore be placed upon the authority of any grant unless it had either recently been made or recently confirmed, and hence it is that we find upon record so

many confirmations of particular estates, rights and liberties successively made to the same parties or their representatives. Charters of confirmation to private individuals are not, however, of such frequent occurrence as those to ecclesiastical and lay corporations, and apparently for this reason, that when land was granted to an individual (which was rarely done unless the party was high in power) some service or rent was generally reserved to the crown, and so long as the same was rendered and the party remained faithful to the King, there was little danger of disseisin or forfeiture; but if the party deviated from his allegiance, the land became forfeited to the crown and was seldom, if ever, restored to him or his family. With corporate bodies, both lay and ecclesiastical, the case was different; the land which they obtained mostly came from private persons; but royal charters generally endowed them with liberties, privileges or immunities which had originally belonged to the royal prerogative, and which may therefore have required confirmation by the successive sovereigns, a supposition which the King would encourage rather than repress, heavy fines being demanded and paid for his charters of confirmation. From the Norman conquest to the middle of the reign of Henry III., charters of confirmation to lay corporations are rare. New charters granting the same privileges as those conveyed by former ones were generally substituted for confirmations of the original grant; for instance, Henry II. granted to the citizens of London a charter of liberties, and Richard I., John and Henry III. successively granted to them the *same* liberties in the very same words, merely referring to the preceding charter, *without reciting it*, thus *sicut carta domini Johannis Regis patris nostri, quam inde habent rationabiliter testatur*. There is very little distinction between the formulas of such charters and those of original grants." The charters of confirmation included in 2 and 3 above are granted by charters of "Inspeximus," so-called from the word *inspeximus*, which occurs in these charters and letters patent which are recited verbatim and then confirmed; "thus an

inspeximus is nothing more than the royal acknowledgment of having seen some diploma, granted by himself or by one of his predecessors, which he approves, ratifies and confirms under the great seal, an act that bound himself but did not alter the nature of the estate vested in the person on whom or whose ancestors it had originally been conferred. (do. p. IV.)

. . . hundreds of instances can be adduced of very early original charters being still in a better state of preservation than the *inspeximus charters* themselves. Moreover, for the purpose of guarding against loss or decay, it was the custom to make duplicates and triplicates of valuable original charters, each of which was sealed, and had equal force and effect."

The inspeximus charter, in England, appears to have originated in the eleventh year of the reign of Henry III. from the following circumstances: By an act of Council in the third year of that reign (the King being then in his nonage) it was declared; "Quod nulla carta, nullæ litteræ patentēs, de confirmatione, alienatione, venditione, vel donatione, seu de aliqua re quæ cedere possit *in perpetuitatem*, sigillentur magno sigillo nostro usque ad ætatem nostram completam," and in the month of February in the eleventh year of his reign, Henry having declared himself in his council at Oxford to be of legitimate age, it was announced to all religious and other persons who wished to enjoy their liberties that they must renew their charters under the King's new seal, because the King regarded ancient charters of no moment; and accordingly a taxation for such renewals was made and levied, not in proportion to the ability of each person, but according to the amount estimated by the judiciary. (Mat. Paris, fol. 232, col. b. ed. 1644). In pursuance of the foregoing resolution of the King in council, letters were subsequently sent to the sheriffs of the different counties (Rot. Claus. 11 Hen. III—p. 1, m. 21 dorso), ordering them to proclaim publicly and immediately that all persons (possessing or claiming to possess lands, tenements, or liberties, by gift, grant or confirmation, either of the King's predecessors as Kings of England or of himself) should

come without delay, at or before the beginning of Lent in the same year, to show by what title they held or claimed their lands, tenements, or liberties, if they wished to retain them. The sheriffs were also ordered to have it proclaimed in their counties that whosoever desired the King's charter or confirmation of lands, tenements or markets, liberties or anything else whatsoever, should come to him within the same term to obtain his charter or confirmation thereof. By this measure King Henry realized not less than £100,000. (One of the many methods employed by Richard I. to procure money after his return from the Holy Land, was to impose upon his subjects the heavy tax of having their charters renewed, for which he demanded large sums of money. In the autograph manuscript copy of Matthew Paris in the British Museum, there is a marginal note, stating that Richard was instigated thereto by Geoffrey Fitz Pierre, Earl of Essex). In the charters of confirmation which were granted upon that occasion the word *inspeximus* followed by a recital ("from word to word, without addition, change, alteration or any diminution,") of the preceding charter or charters, whether original or confirmatory, was first used. "It was not, however, until the time of Edward I. that *inspeximus* or confirmation charters became common, in the thirteenth year of whose reign their various forms were prescribed by Parliament. (See Rot. Claus. 13 Ed. I. m. 7 in cedula)."

It seems by a letter from King Henry V. to his chancellor, to have been the custom for charters of confirmation to have been granted as a thing of course, provided there were nothing specially against it, and that a certain sum or its equivalent, was paid to the King. According to the liberties, franchises and privileges confirmed (hence it is that at the end of charters the words occur, "by fine paid into the Hanaper," "for the fine of so many marks," etc.), the demand was small or great; for instance, the citizens of London, in the first year of the reign of King John, gave the King three hundred marks to have his confirmation of their liberties, whilst

the fullers of Winchester only gave five marks to have the King's charter confirming their liberties. . . . Besides the heavy sums demanded by the crown for its charters of confirmation there were other sums due to the Chancellor and his officers as their fees for affixing the great seal, etc. . . ."

The formulas "*Dei gratia*," etc., are religious expressions, signifying humble acknowledgment of human dependence upon the Almighty. Therefore their use was not restricted to kings, although, in time, they assumed the exclusive right to them. One of the charges brought against the Count d'Armagnac in 1445 was that he had assumed the privilege of styling himself Count *par la grace de Dieu*:—"il fut prouvé qu'il persistoit, malgré les défenses du Roi à se dire Comte par la grace de Dieu."¹ Upon the Count's release from prison it was made a condition that neither he nor his successors should ever again use the style.

Hardy, page 11 et seq., gives the formal parts or clauses of royal charters and their origin as follows:

1. The Premises contain the name and title of the grantor, the address, the name and quality of the grantee, the description of the thing granted and the reason or consideration of the grant being made. Ethelbert, King of Kent (860 to 866), first conveyed lands by written instruments (Hicks. Dissert. Epist., p. 79), before which time lands and possessions were simply conveyed by symbols of the donation,—as a piece of turf, a bow, a lance and the like,—and Beda also relates that he was the first to promulgate written laws (Bed. Eccles. Historiæ, cap. 5, edit Cant.). Richard was the first English monarch, after his coronation, to use the plural *nos*, *nostræ*, etc., which example has since been followed by all English kings.

2. The Movent Clause, comprised in the premises, states the reasons moving the King to make the grant. (When the King's grants are upon a valuable consideration they should be construed favorably for the grantee, for the honor of the

¹ *L'Art de verifier les Dates*, 276.

King, 2 Inst., 446-7). To show that the grant was not in return for a valuable consideration in the reign of Edward III. the custom arose, ever since followed, of stating that the charter is made of the special grace, certain knowledge and mere motion of the King.

3. The Habendum, Tenendum and Reddendum Clause follows the Movent Clause, "first, to name again the grantee, and secondly, to limit the estate" (Co. Litt. 183-a) or to determine what estate or interest is granted, though this is sometimes done in the premises, 2 Bl. Com. 298. "It cannot increase or multiply the gift because it were absurd to say the grantee should hold a thing that was never given him" (3 Bacon, Abr. 395). The object of the Tenendum was to signify the tenure by which the estate granted was to be held. It was formerly important, but, after the statute *Quia Emptores* (18 Ed. 1, 1270), it became comparatively unimportant. Previously to that time it denoted the lord of whom the land should be held; that statute directed all future purchasers to hold of the chief lord of the fee and not of the immediate grantor. It is now of little use, owing to statute 12 Car. II, Ch. 24 (1660) that reduced all tenures by knight service and in capite to free and common socage. It is therefore only continued by custom. In early charters it throws light upon domestic manners and customs or traditions now extinct.

The Reddendum (redditus, render, return, or rent) is the clause whereby the grantor creates or reserves some new thing to himself out of what he grants. It consisted, in chivalry, principally of military services; in villenage, of servile offices; and in socage, of money.

4. The Quare Volumus Clause recapitulates the name of the grantee, the limitation, the thing granted and the service or rent to be rendered. This clause is peculiar to royal charters and is equivalent to and of the same import as the clause of warranty in private charters.

5. The Penal Clause is to deter people from violating or opposing the execution of the charters granted. It consists of

various anathemas, imprecations, maledic terms and censures, leveled at any transgressor. These ceased after the Norman conquest generally, except in charters to religious houses. In a charter of King John to the Archbishop of Canterbury this royal rascal states that all violating its provisions will incur the "indignationem Domini Omnipotentis et nostram."

6. The *Hiis Testibus* Clause contains the names of the witnesses. The presence of witnesses, without their signatures, was enough to establish the validity of the deed; as in Rome the presence was indispensable, not the signing by the witnesses. During the Anglo-Saxon era charters were prepared by professed scriveners or notaries, and were read aloud in some public place. As the grantor could seldom write he made a cross by his own hand before his name (the origin of the existing custom), or the scrivener more generally made it for him. In a charter by King Cadwalla he owns his inability to write his name. "*Propria manu, pro ignorantia litterarum, signum Sanctæ Crucis expressi et subscripsi.*" (Seld. Jan. Angl. lib. 1, S. 42, p. 58).

If the grantor did not sign the charter by his own hand, neither did the witnesses, all the crosses being made by the scrivener. . . . It is impossible to determine when the Anglo-Saxon and the Anglo-Norman Kings state that they sign the charters with their own hands, whether they really did so. It would appear that it was not the invariable practice. As an instance of the crosses being made by the hands of the grantor and witnesses in an Anglo-Norman charter, see the charter engraved in Hickes, *Epist. Dissert.*, and as an instance of their all being made by the hand of the writer of the charter, see the fac-simile of the Conqueror's grant to Battle Abbey, engraved in the first volume of Rymer's *Feodera*.

The names of the officers of state, nobles, etc., in this clause form a valuable body of evidence. In the claim made in 1804 by Charlotte Fitzgerald to the Barony of Roos, a charter of Edward I. was produced before a Committee of the House of Lords to show the name of Robert de Ros occurred as a wit-

ness. A committee appointed by the House of Lords to inquire into the dignity of a peer of the realm inferred that William de Albini, from whom the Earls of Arundel claim, was *Comes Sussex* and not *Comes Arundel*, because he was so styled in the *hiis testibus* clause of a charter to which he was a witness. The value of such evidence, when skillfully used, is well illustrated by the case of a charter to the Bishop of Rochester, at p. 8 of a later edition of Rymer's *Feodera* assigned by the editor to 33 Henry I, but which belongs in fact to 33 Henry III, for the following reasons given by Hardy, note p. XIV. 1, Henry is designated as *Dominus Hibernæ*, a title never borne by Henry I. 2d. The whole of the charter is written in the first person plural, a form never adopted until the time of Richard I (1189 to 1199). 3d. Richard was not the name of the Bishop of Rochester, *temp.* Henry I, but was the name of that Bishop, *temp.* Henry III. 4th. The persons named as witnesses lived in the time of Henry III and not in that of Henry I; and finally the charter in question is enrolled on the charter roll of 33 Henry III.

7. The *Data per manum Cancellarii* and *Data per manum nostram* clauses, which are peculiar to royal charters. One or the other occurs after the name of the witnesses, and is the royal ratification of the charter. Until the middle of the reign of Henry III charters were generally given under the hand of the chancellor; after that they were given under the hand of the King. It must not be supposed, however, that the King either wrote or sealed the charter; the words were merely used to give greater force and weight to the charter, as a royal act.

8. The *Datal* Clause, containing the time and place, an important clause from which the authenticity or spuriousness of a charter has frequently been determined. For instance, it was ordained by one of the eleven canons made at the Celchyth (Chelsea) Council, July 27, 816, that all bishops should date certain acts from the year of the Incarnation of Jesus Christ. Therefore the introduction of the Christian era in the date of a charter purporting to have been granted by King Ethelbert to

the Abbey of St. Augustine, Canterbury, in 605, betrays it to be a forgery. (But query?)

Only a few of the Anglo-Saxon charters extant are dated. Some of the charters of the Anglo Norman Kings are dated, others are imperfectly dated, and many are without any date. From the beginning of the reign of Richard I. to the present time the Datal Clause commonly used by the English Kings contains the name of the place at which the instrument was granted, the day of the month, and the regnal year of the King making the grant.

9. The Sealing Clause. Seals were affixed to give greater weight and authority than these instruments could acquire from a mere authentication by manual signs that could be easily imitated, whereas it required much ingenuity and labor to imitate a seal. The practice of sealing charters is supposed to have been introduced in England by Edward the Confessor, who, when on a visit to the Norman court, learned it from his cousin, William, Duke of Normandy.

These statements are summarized from Hardy's work, but must not be restricted to royal charters only, most of his observations being equally true of charters by lords of manors. Hardy's work treats of royal charters only, and probably unconsciously, he often uses language unduly limiting his propositions to royal charters, as if they do not apply to charters of lords of manors. Thus another link was added to the chain, weak in reality, that all power is derived from the central power, the King.

If it be asked what was the object of the royal charters of *Inspeximus* and *Confirmation* if these towns were already incorporated by the charters of their lords, the answer is that it was one of the means employed by the Crown to replenish the depleted treasury, like the "strike" of the modern legislature.

"The Exchequer was a court greatly concerned in the conservation of the prerogatives of the Crown. It was the care of the Treasurer and Barons and the King's Council at the Exchequer to see that the rights of the Crown were not invaded

by such as claimed liberties or exemptions; and to allow or disallow of liberties or exemptions claimed, as reason and justice should require. 'Tis true the allowance or disallowance of liberties had some relation to the royal revenue; inasmuch as men were wont to be punished by amercements, seizures and fines for undue usurpations of liberties, and were obliged or induced to sue for confirmation or improvement of their liberties, if they desired the same. However, many affairs of this nature were wont to be examined and regulated at the Exchequer. And therein great care was taken to preserve the rights of the Crown inviolate. Upon this ground probably it became the usual method for charters of liberties to be read and enrolled at the Exchequer. So that commonly when the King granted or confirmed liberties by his letters patent, a close writ directed to the Treasurer and Barons was wont to issue resiting the substance of such grant or confirmation, and commanding the Barons to allow thereof. The records both of the Chancery and the Exchequer are full of instances of these matters."¹

We think now of courts as protectors of the liberties of the subject. But the Court of the Exchequer, according to the admissions of this authority, was the protector of the rights of the Crown. The town was powerless before a court selected by its opponent, paid by him and dependent upon him for its tenure of office.

We are all familiar with the theory that a grant to A and his heirs does not incorporate, but that a grant to A and his successors does incorporate. According to many old authorities, including the great Coke, Sheppard (the writer of the first book on corporations, London, 1659), Brady, Madox, Merewether and Stephens, and others, this is the essence of incorporateness—the taking by succession. But, according to modern writers, the essential thing in incorporation is the creation of the new *persona ficta*, the immaterial, artificial, juristic entity that is to continue in being indefinitely (unless

¹ Madox, Hist. of the Exchequer, 502.

its life be expressly limited by the terms of its creation). The real question is whether this new *persona ficta* has come into being. Was that the intention of the parties and has it been sanctioned by long-continued general assent or by law?

The advocates of the old theory that there must be words of succession in order to create a corporation ignore some of the old leading cases on this subject. See, for instance, the case of the men of Dale, Y. B. 7 Ed. IV, Trinity Term, 7 (1468).

“Nota, que fut tenue en le Common Bank que si le Roy done en fee ferme *probis hominibus villæ de Dale* que le corporation est bon.”

See also the case of the men of Islington, Dyer 100 (1553).

“It was holden for law in the Star Chamber by Bromley, Chief Justice, Sir John Baker and others that if the Queen at this day would grant land by her charter *to the good men of Islington* without saying, *to have to them, their heirs and successors*, rendering a rent, this is a good corporation for ever to this intent alone and not to any other, etc. But then it seems they are only tenants at will; and if the Queen release or grant to them the said rent and fee-farm, it should seem the corporation is dissolved *ipso facto*, for the rent and farm was the cause¹ which enabled the corporation, etc., *Ideo quaere*.”

Too much importance has been attached to the word “successors” as indicative of incorporateness. In a sense it may be said that the succession is in many persons in case of joint tenancy and even in case of tenancy in common and of partnership. Yet there is no incorporation. So, too, in the United States, in case of a grant to A and his heirs; as all his children and all their children, and so on, without limit, are his heirs, the succession is in many persons. We have already seen that there may be incorporation without using the word “heirs” or the word “successors” and cases, soon to be given, show that incorporation may result when either word or when

¹ This shows how essential to the idea of municipal incorporation of old was the fee-farm. It shows how slight a hold the conception had then gained, of the irrevocability of a grant of incorporation by the grantor alone.

both words are used. Again, the question is not what words were used but, has the new legal entity, the new *persona ficta*, been created?

Evidently municipal corporations were in existence in England long before it was generally known, or perhaps it would be more accurate to say that what existed, through a process of unconscious development became afterwards recognized as corporations. The thing existed first and afterwards it received its name—which is but the usual order.

“ . . . long before the judicial conception of an artificial civic body came into being, the borough had, what may with propriety be called, a natural corporate existence; it was an aggregate body acting as an individual, making by-laws, having a common seal, holding property in succession and appearing in courts of law. The formal incorporation of boroughs in the fourteenth and fifteenth centuries did not materially alter the town constitution; it was in most cases merely a recognition of existing franchises with a stronger accentuation and a more precise formulation of the right of independent action as a collective personality with a distinctive name, especially as regards the holding of real property. In the sixteenth, seventeenth and eighteenth centuries the term “corporation” was more commonly applied to a select governing body, which, since the fourteenth century, had gradually usurped the earlier popular government in most boroughs.”¹

What we call a corporation was first called “un corps” or a body, whence our “body politic” or “body corporate”; or “un gros” or something that had an existence in itself, apart from its constituents. Thus there was gradually evolved the idea of an abstract artificial individuality, composed of members for the time being, to be succeeded by others after them, but continuing after their death. This became the *persona ficta* of a later time.

Merewether and Stephens contend (p. 859) that the first real incorporation in England was the incorporation of Kings-

¹ Gross, Gild Merchant, 95.

ton-upon-Hull in 1439. Pike, Int. to 1 Y. B. 6 Ed. III, XLIV, says that Wells was incorporated three years earlier than the charter of Ed. III (1327 to 1377) to Coventry that Gross, in 1 Gild Merchant, 93, note, says is the earliest charter of incorporation known. The earliest mention of a borough as "un corps" is in Y. B. Easter, 4 Ed. II, 103 (1311).

These differences illustrate the difficulty writers of recognized weight have in deciding what constitutes incorporation. They show also how slow was the evolution of the conception of "corporation." The charter of Coventry runs to the "heredes et successores," but mentions neither "corporation" nor "body politic."

In 1444, five years after true incorporation was understood, according to Merewether and Stephens, 852, Henry VI granted a charter to the mayor and burgesses of Newcastle *and their heirs*. But the quibbles and inconsistencies of these writers are too well known and admitted now¹ to call for further mention.

No doubt, for a long time only the word "heirs" was used in charters of incorporation, then "heirs and successors," and finally "successors" alone became recognized as more appropriate. This may have resulted from the use of the word "successors" in ecclesiastical charters, where, obviously, "heirs" would be incorrect, "successors" being the only appropriate word to designate the successors of ecclesiastics in their ecclesiastical capacity. But as already shown in the cases of the men of Dale and of the men of Islington—and its importance justifies its continued repetition—a corporation can be created without using either "heirs" or "successors." And the change from "heirs" to "successors" was gradual and marked by alternations in their use, and sometimes by the use of both.

The unwarrantable conclusion drawn by Merewether and Stephens, from the substitution of "successors" for "heirs," is that no corporation did or could exist without the word "successors," and that there were no corporations in England until

¹ Gross, Gild Merchant.

that word was used. This is largely a matter of definition. If words of succession are indispensable to incorporation, then, of course, there were no corporations in England until such words were used. But these writers are not consistent; for finally they abandon the theory they have thus far strenuously maintained, by admitting (p. 548) that the adoption of the word "successors" was rather the effect of accident than of intention, "for we find," they say, "in the succeeding reign that charters were again granted to the citizens and their heirs."

The facts of history now known, and many of which were unknown to Coke, show that charters were granted by lords of manors, lay and spiritual, as well as by kings holding manors as of their own demesne, and not acting in the exercise of any royal prerogative, to towns and boroughs confirming the continued enjoyment of "liberties" in the future as they had already been long enjoyed in the past. Sometimes additional new "liberties" were added, and afterwards similar brand-new charters were granted, relating only to future enjoyment of such "liberties" similar to those already long enjoyed by the old towns and boroughs. In return for these grants the townspeople agreed at first, each one severally, to render his feudal dues (or rent in place thereof), then a group of the principal townsmen or burghers became responsible for the whole sum, and finally the town itself became thus liable for the fee-ferm rent. These early charters ran to the grantees or to the grantees and their heirs, then to their heirs and successors, finally to their successors, but the change in form was not continuous, and until the form became fixed we find numerous fluctuations, and sometimes neither "heirs" nor "successors" were mentioned. There was no intention on either part to form a corporation, indeed neither knew what a corporation was; for the name did not exist, but the thing itself was being gradually evolved. Edward I., through exercise of *quo warranto*, vastly increased the royal power over corporations and diminished the granting of charters by lords of manors,

although they still continued to confirm the charters they had granted. Gradually, however, it became recognized that the King's charter was of superior efficacy to that of the lord of the manor, and the King not only granted his charter, he also confirmed his own charters granted as lord of the manor as well as those of other lords of manors. The lawyers gradually evolved the idea of the new *persona ficta*, the corporation, and by the time the courts accepted it they also adopted the principle that a better knowledge of what had before been done would have saved them from, the doctrine that only the King can incorporate. Fixed by the dictum of Coke in the case of Sutton's Hospital, which was not a case of municipal incorporation, and not questioned by the courts after Coke's time, this erroneous doctrine has become accepted as law. Or, to put the idea in another form, towns and boroughs arose gradually from the increase of population in favored spots; the inhabitants of these towns (*villata*, *vills*), progressing from the condition of *servi* (serfs, almost slaves) to that of *villani* (villeins, dwellers in *villes*, *villas*, farms or towns—for the terms are synonymous), began to acquire certain rights, through long-continued enjoyment of certain privileges, or "liberties" as they were called, according to the custom of the manor; just as copyholders acquired a certain title by copies from the court roll of the lord of the manor, so did these townspeople or burghers secure instruments in writing stating of what their rights or "liberties" consisted, in charters that contained also statements that they might continue to enjoy *in futuro* these "liberties," further new liberties being added, from time to time, in successive charters of *inspeximus* or confirmation, or both. Charters of similar import were issued creating new towns upon the model of those already in existence. All these were at first issued by lords of manors, lay or ecclesiastic, or by the King acting at first as the lord of the manor, which he held as his own demesne, but finally in the exercise of his royal prerogative. In return for these charters a fee-farm rent was paid collectively instead of being paid by each townsman or

householder individually, as had been previously done; this having, in turn, succeeded the earlier state of things under which each serf, struggling upward into the condition of villein, rendered stated services that still earlier were indeterminate, or, in other words, were the services of a slave, *servus* or serf. Gradually the idea developed that the charter, in return for a fee-farm rent, had set up a state of things that was to continue indefinitely, to accentuate which, following the example set by ecclesiastical corporations, the more apt word "successors" took the place of the word "heirs" in these charters, and the royal power superseded that of lords of manors; and thus there was gradually evolved the idea of a new juristic entity of perpetual life, the *persona ficta* of the law, the municipal corporation of England, the name "corporation" not being given to it, however, until long after the thing itself actually existed.

At first, lords of manors and Kings looked upon these charters as revocable, and they abused their power to repudiate them when pecuniary or other necessity pressed, securing either a *douceur* or higher fee-farm rent, as a return for their renewal. Hence the frequent charters of confirmation, otherwise so difficult for us to understand, especially upon the accession of a new lord or King. The King had the advantage of the power to use the writ of *quo warranto* and of courts subject to his will and ready to do his bidding under the forms of law and precedent. Slowly the idea gained ground of the irrevocability of such grants and of the right of the grantees and their successors to continue to enjoy indefinitely, as to time, the "liberties" for which they were paying, likewise, indefinitely, and out of this acknowledgment of the permanent arrangement entered into by the parties, there was gradually evolved the idea of incorporation and acknowledgment that what had been done had created corporations. Under the despotic Tudor Kings, the King's charter and the King's confirmation of earlier charters, whether granted by lords of manors or by Kings, took on a pre-eminence hitherto unsus-

pected and finally supplanted all other charters. This process continued under the Stuarts, Coke finally stamped with the authority of his great name the incorrect declaration that only the King can incorporate, and lords of manors ceased to grant charters.

It is not clear how Coke arrived at the conclusion that only the King can make a corporation when we take into consideration the fact that England at that very time had many municipal corporations not made by the King, and that no one had ever claimed that all ecclesiastical corporations in England were incorporated by the King. So patent a fact could not escape notice, but it was got around by the fiction of prescription. In the particular case of Sutton's Hospital, a case that contains more dictum and more bad law than almost any case reported by Coke, the statement is only dictum, because it does not follow that what may be true of a hospital corporation is necessarily true of a municipal corporation also. At this time no distinction was made between different kinds of corporations, so the fallacy continued to be repeated, parrot like, even after the difference in kind was recognized. The case of Sutton's Hospital¹ was brought in 10 Jac. I (1613). Simon Baxter, cousin and heir of Thomas Sutton, the founder of the hospital, brought an action in trespass against Richard Sutton and John Law, to try the title to certain lands owned by Thomas Sutton, claimed by the plaintiff as his heir. The case was tried before a jury, who returned a special verdict to the effect that Thomas Sutton was seised of the lands in question; that Parliament passed an act (set forth in full in the pleadings) to confirm and enable the erection and establishment of a hospital, a free grammar school, etc., by Thomas Sutton. The act recites that Sutton petitioned His Majesty and Parliament that he might build and erect, at his own cost, an abiding place for such poor people as he should name, etc., and a grammar school to teach the children reading, writing, Latin and Greek grammar, etc., to be called the Hospital of

¹ 10 Rep. *1 a.

King James, with governors and their successors named by the suppliant during his life time and after his death by the governors, to be incorporated as a body politic and corporate by the name of the Governors of the Hospital of King James, to hold said lands in perpetual succession, any statute of mortmain, etc., to the contrary notwithstanding, with all the powers, etc., named; whereupon the King had made his letters patent (also set out in full in the pleadings) creating the said corporation (after the passage of the above act of Parliament), and Thomas Sutton had conveyed said lands to said corporation by his last will and testament giving certain personalty, as specified, to said corporation, and had died without issue, leaving the plaintiff, his cousin and next heir; that the defendants were in possession of said real estate, etc., claiming as Governors of the said corporation, and praying the advice of the court whether the defendants were guilty of the trespass alleged or not, etc., whereupon judgment was given for the defendant.

The report states:¹ "Upon not guilty pleaded, the whole special matter was found, which was adjourned out of the court of the King's bench by the judges of the same court into the Exchequer chamber, and it was argued at the bar for the plaintiff by John Walker of the Inner Temple, Yelverton of Gray's Inn, and lastly by Bacon, Solicitor-General; and for the defendant by Coventry of the Inner Temple, Hutton, Sergeant-at-Law, and by Hobart, Attorney-General. And the plaintiff's counsel argued strongly in general: (1) That there was not any incorporation created by the King's letters patent, dated 22 Junii, 9 Jac. Reg. (1612); (2) admitting the incorporation was good, yet there was not any foundation made by Sutton, according to the authority given him; (3) that the bargain and sale made by Sutton, bearing date 1 Nov. 9 Jac. (1611), was utterly void, and, by consequence, all the said possessions descendable to the plaintiff in particular, with other fine metaphysical points foreign to our mode of

¹ 10 Rep. *23 a.

thought set forth under the ten points, concerning which we can heartily agree with Coke when he says:¹ "Which brief report I have made of these objections because I think them, or the greater part of them, were not worthy to be moved at the bar, nor remembered at the bench; and that this case was adjourned to the Exchequer chamber by the justices of the King's bench, more for the weight of value than for the difficulty of the law in the case." "And all the arguments which have been made against this honorable work of charity are hatched out of mere conceit and new invention without any ground of law, and such which have any colour were utterly mistaken."²

After naming the judges before whom the case was argued, among whom was himself as Chief Justice of the Common Pleas, he concludes, quaintly, "that judgment should be given against the plaintiff, and, *quia rectum est judex sui et obliqui*, a right line makes discovery not only of that which is right, but of that which is wrong and crooked; and that the confirmation of the right and truth is the confutation of error and falsehood. I will report the effect of the reasons and causes affirming and confirming the resolutions of the judges which are of so great authority, perspicuity and gravity that it is not necessary that the objections should have any particular answer, and yet, for the satisfaction of all, every one of them shall be particularly answered."

Knowing as we do the feeling between Coke and Bacon, we wish we had some means for finding out whether, perhaps, it had not some part in causing Coke's severe language quoted. In this connection we may note that among "the names of Governors nominated by Sutton and expressed in the said charter," we find the name of "Sir Edward Coke, Knt., then Chief Justice of the Court of Common Pleas, and now Lord Chief Justice of England."³ This, however, did not prevent his sitting on the case.

¹ *Ibid.* *24 a.

² *Ibid.* *29 a.

³ *Ibid.* *34 b.

Coke ends his report of the case as follows :¹ " Which case I have reported the more at large for three reasons: (1) For the confirmation of incorporation founded for works of piety and charity in time past. (2) For the better instruction how they, which shall be founded hereafter, shall be so established that no exception may be taken to them. (3) For the resolving of certain opinions and questions which were moved at the bar, and which might have disturbed the peace of the law."

From which it appears that Coke's theory was that when a case is before the court, besides deciding the particular case, the court can go on and declare what the law is in various other supposable cases. Of course, no such theory will stand for a moment, but it may be that it will account for the great amount of dictum in this and in other cases during this period, particularly by Coke. His antagonism to Bacon and his situation in the case as one of the governors of the corporation in whose favor the case was decided, also contribute to impair our respect for this case as an authority. These circumstances but add to the doubt thrown upon it by the bad logic of the report.

Let us examine briefly these objections, and how they were met in the opinion, as reported by Coke.

1. "There was not any incorporation created by the King's letters patent, but by the act of Parliament."

Ans. "No hospital, etc., was founded by the act itself, the scope of which was to enable to erect it."

2. "That no hospital was founded by Sutton, and therefore the incorporation failed; that Sutton had the King's license to found a hospital, which was an act precedent to be performed before incorporation, and was not done."

Ans. "Incorporation should precede the execution of this license. 'A capacity to take in succession cannot be without incorporation.'"

3. "That the King, by his charter, cannot name the house and inheritance of Sutton to be an hospital, for that would be to give a name of an hospital *in alieno solo*."

¹ *Ibid.* *34 b.

Ans. The name of incorporation is a proper name or name of baptism ; in this case Sutton, as godfather, gave the name, and by the same name the King baptized the incorporation. By which it appears that the objection that the King could not give a name to a house which is the inheritance of another, is not of any value, for here Sutton has consented and assented to it ; and all this is done at his humble suit ; and this objection tends to the dissolution of all ancient deans and chapters."

4. "The place of every corporation ought to be certain, for without a certain place there cannot be any incorporation."

Ans. ". . . all the house and other the premises are baptized by the King in the name of the hospital, etc., in which is no shadow of uncertainty." (Here follows a statement of what things are of the essence of a corporation, etc. Clearly this is dictum).

5. "As to the fifth objection, that no incorporation was made immediately as the letters patent import, nor can be till the master was named, and therefore the charter is repugnant and void. To that it was answered that this objection extends to a great number of incorporations, for when a corporation is created by letters patent, by the same patent power is given to the body to choose a mayor, aldermen, or bailiffs, or governors, or the like, and yet they are immediately incorporated by the same letters patent.

6. "Until there can be an actual hospital and poor in it, there cannot be governors of them, for governors ought not to be idle, or as cyphers in algebra."

Ans. ". . . there was an hospital *in potestate*, and an hospital *in exec* ; also an hospital *in potentia*, and an hospital *actu*, and an hospital *re*, and an hospital *nomine*. And as to the creation of an incorporation, an hospital *potestate*, *potentia*, *seu nomine* sufficeth, as one may by letters patent be governor of an army before there be an army, vide 1 H. 6, Protection, 56, 2 Inst. 724."

7. "To every such corporation a foundation is requisite, and here is not any foundation made by Sutton."

Ans. ". . . it is to be known that in law there are two manners of foundation, one *fundatio incipiens*, the other *fundatio perficiens*"

8. "The nomination of the master made by Sutton is void for two reasons: one, that he was nominated to be master, but at will, when he ought to be nominated for life, inasmuch as he is to have a freehold in the land. And also there ought to be at least an actual hospital founded by Sutton according to his license before he could nominate a master for it; for otherwise it should be a mathematical or utopical hospital."

Ans. ". . . Sutton had liberty, at his will and pleasure, to nominate him, and when he is nominated, he is master by force of the said letters patent, and is now as if he had been named in and by the letters patent themselves at first; and the other part of the object is answered before."

9. "The said bargain and sale made by Sutton to the said governors was void for these reasons: (1) That the money, which was the consideration thereof, was paid by the private persons of the governors, and therefore the bargain and sale of the manors, etc., cannot enure to them in their politic capacity. (2) The *habendum* is to the governors upon trust and confidence, and a body politic of many cannot stand seised of a trust and confidence to the use of another. (3) Because no hospital was founded by Sutton, according to his license, and for all the other objections made against the foundation and incorporation, the said bargain and sale was void, and by consequence all the said manors descended to the plaintiff as cousin and heir to Sutton."

Ans. ". . . money given by governors, or any of them as private persons, is a good consideration to grant the land to them in their politic capacity; but the indenture imports that they paid it as governors, and by such name they are acquitted by the indenture. Also, there is twelve pence rent reserved to Sutton and his heirs, which is a good consideration. (2)

Although in the *habendum* a trust is declared that without question cannot make the bargain and sale void ; but the conveyance, being by bargain and sale, was wisely made to declare the confidence and trust. And as to the third, that is clearly answered and resolved before."

10. "That no hospital was incorporated by the said letters patent, and therefore it was objected, that the King could not incorporate them by the name of governors, etc., of the hospital, but of an hospital in law, or a legal hospital, as it was called ; for the governors cannot plead that they are seised *in jure hospitalis sui*, because in law there was not any hospital."

Ans. ". . . the pleadings should be that they were seised in their demesne as of fee *in jure incorporationis sue* . . ."

Is it possible that three hundred years hence our legal reasoning will seem as void of real meaning and as puerile to our descendants as much of this reasoning seems to us ? In what way is the declaration that only the King can incorporate essential to the case ?

It seems strange that nowhere in the case is the statute 39 Eliz. ch. 5 (1597) alluded to. As the first general incorporation act, it is worth examination in this connection. It is entitled "An act for erecting of hospitals, or abiding and working houses for the poor." It begins: "Whereas, at the last session of Parliament, provision was made as well for maimed soldiers by collection in every parish as for other poor, that it should be lawful for every person, during twenty years next after the said Parliament, by feoffment, will in writing, or other assurance, to give and bequeath in fee simple, as well to the use of the poor as for the provision, sustentation or maintenance of any house of correction, or abiding houses, or of any stocks or stores, all or any part of his lands, tenements or hereditaments ; (2) her most excellent Majesty, understanding and finding that the said good law hath not taken such good effect as was intended, by reason that no person can erect or incorporate any hospital, houses of correction or abiding places, but her Majesty or by her Highness's special license by

letters patent under the great seal of England in that behalf to be obtained; (3) her Majesty . . . is . . . pleased and contented that it be enacted by authority of this present Parliament; (4) and be it enacted by authority of this present Parliament, that all and every person and persons seised of an estate in fee simple, their heirs, executors or assigns, at his or their wills and pleasures, shall have full power, strength, license and lawful authority, at any time during the space of twenty years next ensuing, by deed enrolled in the high court of chancery, to erect, found or establish one or more hospitals, *Maisons de Dieu*, abiding places or houses of correction . . . to have continuance forever, and from time to time to place therein such head and members, and such number of poor as to him, his heirs and assigns shall seem convenient; (5) and that the same hospitals or houses so formed shall be incorporated, and have perpetual succession forever in fact, deed and name; . . . (6) and be called by such name as the said founder or founders, his heirs, executors or assigns shall so limit, assign and appoint; (7) and the same . . . shall be a body corporate and politic, and shall . . . have full power, authority and lawful capacity and ability to purchase, take, hold, receive, enjoy and have to them and to their successors forever as well, goods and chattels, as manors, lands, tenements and hereditaments, being freehold, of any person or persons whatsoever, so that the same exceed not the yearly value of two hundred pounds above all charges and reprises to any one such abiding house, hospital, maison de dieu, or house of correction, and so as the same or any part thereof be not holden of our sovereign lady, the Queen, or any other person by Knight's service, without license or writ of *ad quod damnum*, the statute of mortmain, or any other statute or law to the contrary notwithstanding; (8) and that the same . . . shall have full power and lawful authority, by the true name of the incorporation thereof, to sue and be sued, to implead and be impleaded, to answer and be answered unto, in all manner of courts; . . . (9) and that the same . . .

shall have and enjoy forever a common seal or seals; . . .
 (10) and further shall be ordered, directed and visited . . .
 by such person or persons . . . as shall be so nominated
 or assigned by the founder or founders thereof; . . . (11)
 and that it shall be lawful unto the founder or founders, his
 and their heirs and assigns, upon the death or removing of
 any head or member, to place one other in the room of him
 that dieth, or is removed, successively forever."

The second section provided that no lease for more than twenty-one years, etc., should be made by any such corporation, etc., and the fourth section provided that every such corporation should be endowed with lands, etc., of at least the yearly value of ten pounds by the year. By act of 21 Jac. I. Ch. 1 (1623), this act was revived and made perpetual, and all corporations erected, etc., "at any time since the said twenty years expired, . . . or at any time hereafter to be erected . . . according to the purport of said statute . . . shall be incorporated . . . to all intents and purposes, according to the provisions . . . of the said act, as if the same had been made, founded or endowed within the space of twenty years next ensuing the said statute." It may be that the value of the estate incorporated prevented its incorporation under this statute of Elizabeth, or it may have been excess of caution that led Sutton's advisers to incorporate it as they did. Probably, as the statute was new, its full force and effect had not yet become recognized. But it seems strange to us that its value in argument was not appreciated, and that it was not cited in the decision.

Returning now to the statement criticised, "that none but the King can create or make a corporation"¹ we find that Coke's authority is 49 Ed. 3, 4, 49 Ass. 8 (1376). Upon examining it we find that Coke's inference is overdrawn, and that Rolle's Summary² is more accurate, although he does say pre-

¹ Sheppard, p. 8, citing 10 Rep., *33 b.

² Rolle, Abr. 512. "3. Si le Maior et Comminaltie de London prescribe a faire un auter Corporation en le Citie et lour customs sont confirme,

viously on the same page: "1 Nul lorsque le Roy poet faire un corporation—Co. 10-33 B-49 Ed. 3-4-49 Ass. 8."¹ In the case relied upon to support the doctrine, now accepted, that only the King can incorporate,² we find:

"Cavend. La Comminalty de Londres qu'est perpetual, et d'antiquity q'est un gros a p luy parcel 'de cest commo, ne poet p faire commun de luy m deins commun sans spec chr le Roy: car ceo attient au Roy *et nul* aut, de fair come issint q cet Fratnit q est fait deux m d'un art de Whitawv's ne puit pas p Ley estre adjudge corps d'aver estat de Frant. *p.* purch, ne *p.* devise; *i. e.*, the commonalty of London, which is perpetual and of antiquity, which is a body (corporation) by itself, cannot make a commonalty (corporation) of itself in the commonalty without special charter of the King; for, that belongs to the King and no other, to make it so that this Fraternity, which is made of themselves of a trade of Whitawyers, cannot, by law, be adjudged a body (corporation) (with power) to have (to hold) an estate of freehold by purchase nor by devise."³

uncore n'est bons sans charter del Roy, 49 Ed. 3, 4, 49 Ass. 8;" that is to say, London (a municipal corporation) cannot make another corporation without a charter from the King, giving power to do this to the city of London. This is not an authority that only the King can incorporate a municipal corporation which is a corporation of an entirely different nature. This other corporation that London cannot make, refers to incorporation by London of the guild of Whitawyers, tanners or dressers of white leather, from White and "taw, to dress hemp or leather," 2 Halliwell, Dict. of Archaic and Prov. Words. But the word is used by George Eliot, in "Adam Bede," as synonymous with *saddler*.

¹ On the margin of later editions of Coke we find "1 Roll 512" cited; *i. e.*, Coke is made to refer to Rolle and Rolle is made to refer to Coke. In this way a vicious round of what is called "authority" is established.

² 49 Ed. 3, 4 a, 49 Ass. 8 (1376).

³ This judge, John de Cavendish, was the son of Roger de Gernum, the grandson of Ralph de Gernum, a justice itinerant in the reign of Henry III. (1216 to 1272), who was a descendant of Robert de Gernon, a Norman, who, for the assistance he gave to William the Conqueror, received various lordships in Hertfordshire. Whether John de Cavendish, so named from a manor in Suffolk, acquired the manor in right of his mother or of his wife, is uncertain. He became Judge Nov. 27, 1371, and was raised to the Chief Justiceship probably July 15, 1372. A case being heard before him in which a question arose as to a lady's age, her counsel

The absence of the word "corporation" in this case is noteworthy. There is an evident groping about for a fit word to express the idea, evident in using the words "commonalty" and "gros." Although the thing itself existed, the name we know it by had not been invented. The word "corporation" was first introduced in the margin of the fourth volume of the Year Books, folio 29 B. (not in the cases themselves) and in the compilation or abridgment of Sir Anthony Fitzherbert printed by Pynson in 1514, at the beginning of the reign of Henry VIII. Although he uses the word, he does not treat of corporations under a separate title. In Brooke's Abridgment, published in 1568, the title "Corporations and Capacities" appears for the first time. It contains only ninety-six short placita.¹ The first abridgment published, that by Statham, published possibly in 1495, does not mention corporations.

"There is, however, a wide difference between the time of King John and the earliest time at which the word 'body' or 'corporation' was anywhere applied to anything resembling a lay corporation; and it is by no means impossible that the words were seen by some lawyers to be applicable to circumstances already in existence before they were formally used in charters. Complex ideas, like that of a *persona ficta*, are slow of growth, and slowly adopted, and do not spring, like Minerva, ready armed from the head of Jupiter. There may even have been a time when the burgesses of some boroughs may have been a corporation without knowing it themselves, just as M. Jourdain spoke prose more than forty years pressed the court to have her before them and judge her age by inspection. But "Cavendish, Justice," said: "Il n'ad nul home en Engleterre que puy adjudge a droit deins age on de plein age; car aucun femes que sont de age de XXX ans voilent apperer d'age de XVIII ans." Y. B. 50 Ed. III., fo. 6, pl. 13. He was beheaded by the mob and his remains insulted on the same day Wat Tyler was killed in London, June 15, 1381. A mob of 50,000 attacked his house and plundered and burned it, all who had learning being the object of their vengeance. He was the ancestor of Baron Cavendish of Hardwicke, 1604, created Earl of Devonshire in 1618. The fourth Earl was created Duke of Devonshire in 1694 (4 Foss, Judges of England, 42).

¹ M. & S. 689, 692.

in absolute ignorance of the fact (Molière, *Le Bourgeois Gentilhomme*, Act II, Scene 6)."¹

" . . . we can find in our law books no such terms as *corporation*, *body corporate*, *body politic*, though we may read much of *convents*, *chapters* and *communities*. The largest term in general use is *community*, *commonalty* or *commune*, in Latin, *communitas* or *communa*. It is a large, vague word. . . . But we dare not translate it by *corporation*, for if, on the one hand, it is describing cities and boroughs which already are, or at least are on their way, to become corporations, it will stand equally well for counties, hundreds and townships which in the end have failed to acquire a corporate character"²

¹ Pike, Int. to 1 Y. B. 16 Ed. III, full of valuable suggestions.

² I Pollock & Maitland, *Hist. of Eng. Law*, 494, 2d ed. But in New England, "towns were of themselves corporations, having perpetual succession, consisting of all persons inhabiting within certain territorial limits." By Shaw, C. J., in *Overseers of the Poor of Boston vs. Sears*, 22 Pick. 122 at 130 (1839); 1 Gross, *Gild Merchant*, 94.

For numerous actual examples of New England towns that were undoubtedly self-incorporated, and were afterwards admitted to be valid corporations by the legislature, see "The Right to Local Self-Government," Eaton, in 13 and 14 *Harvard Law Rev.* Feb. to June, 1900. Compare the too hasty generalization of the dictum in *Bloomfield v. Charter Oak Bank*, 121 U. S. 121 (1887) at p. 129, "Towns in Connecticut, as in the other New England States, differ from trading companies, and even from municipal corporations elsewhere. They are territorial corporations, into which the State is divided by the legislature, from time to time, for political purposes and the convenient administration of government: they have those powers only, which have been expressly conferred upon them by statute, or which are necessary for conducting municipal affairs; and all the inhabitants of a town are members of the *quasi* corporation. 1 Swift's System, 116, 117; *Granby v. Thurston*, 23 Conn. 416; *Webster v. Harwinton*, 32 Conn. 131; *Dillon, Mun. Corp.* §§28-30."

It is thus that dictum in one case (*Webster v. Harwinton*), quoted as law in another case, becomes finally accepted as law.

Imagine the amazement of a Rhode Islander upon being told that all the inhabitants of a town are members of it! Of course it is not intended to deny that some towns have originated through action of the legislature—examples are given in the articles referred to. But as a general statement of the origin and powers of towns in New England, the

It is remarkable that so late a writer as Brady¹ should use the word "community" when he obviously means "charter of incorporation." This shows that even then, in England, our conception of "corporation" had not obtained foothold. There was still a groping about for the right word. Brady uses "communia" and "communitas" on the same page.

"In our modern languages the Roman word that most nearly answered to our *corporation* has come to stand for the corporations of one small class, the learned corporations that were founded in the twelfth and thirteenth centuries, . . . and if the universities of Oxford and Cambridge cared to assert that they are the oldest of all English corporations, something might certainly be said in favor of their claim." . . . But Bracton "nowhere makes an act of royal or public power necessary to the existence of universities."² The doctrine that only the King can incorporate was affirmed by Coke when he was a King's judge at a time when there was no independent judiciary. The judges were dependent upon the King's will for office and salary, with the inevitable consequence that it was considered to be a part of their duty to extend the King's prerogative, especially in the Court of the Exchequer.³

opinion is manifestly incorrect, and could only have been written by one either ignorant of the facts or reasoning incorrectly from them. It is difficult to continue to retain the respect for the Supreme Court of the United States it should always command, when we find it so constantly indulging in dicta, and in incorrect generalities foreign to the case before the court.

¹ Treatise on Cities and Boroughs, 1690, p. 21.

² I P. & M. Hist. Eng. Law, 495, 496.

³ "The Exchequer was a court greatly concerned in the conservation of the prerogatives as well as the revenues of the Crown. It was the care of the Treasurer and Barons and King's Counsel at the Exchequer to see that the Rights of the Crown were not invaded by such as claimed Liberties or Exemptions: And to allow or disallow of Liberties or Exemptions claimed as reason and justice should require. 'Tis true the Allowance or Disallowance of Liberties had some relation to the Regal Revenue: inasmuch as men were wont to be punished by amercements, seizures and fines for undue usurpations of Liberties: And were obliged or induced to sue for Confirmation or Improvement of their Liberties, if they desired the same. However, many affairs of this nature were wont to be examined and regulated at the Ex-

The extent of the absolute power of the King at that time may be better appreciated by an instance of its exercise. James I., with his own hands, tore out of the Journal of the House of Commons the record of a "protestation" in vindication of the privileges of the House made in reply to the King's order in a letter to the speaker forbidding the House to discuss certain matters of state.¹

Consider also the frivolous charges upon which Coke was removed from office by the King when he would not bend to his arbitrary will. The King had claimed the power to grant an ecclesiastical preferment to be held with a bishopric (in commendam). Coke incurred the King's displeasure because he did not agree with him. He disregarded the King's direction to put off a cause in which this power of the King was collaterally attacked, until the King could be present in person. The King then asked his judges (this use of the personal pronoun well illustrates the relation of the judges to the King at that time) whether they ought not to put off a case in which the royal prerogative was involved, until His Majesty consulted them. All answered "yes" except Coke, who gave the noble reply: "When the case happens I shall do that which shall be fit for a judge to do." For this he was suspended from office and charges were preferred against him. Among them were charges that his reports were inaccurate and that he had held, in Dr. Bonham's case, that a court could declare a law of Parliament void.²

chequer. And therein great care was taken to preserve the rights of the Crown inviolate." In other words, this was not a court of justice within the present accepted meaning of those words. It was the machinery through which the King squeezed all he could out of his subjects, especially when he did not want to summon Parliament and was trying to rule without one. A study of the history of *quo warranto* will clearly bring this out, but lack of time and space forbid it here.

¹ Campbell, Lives of Chief Justices of England, in Life of Lord Coke, 372, Ed. of 1874, John Murray.

² 8 Rep., 114 a at 118 a: "And it appears in our books that in many cases the common law will controul acts of Parliament and sometimes adjudge them to be utterly void; for when an act of Parliament is against

Campbell says "This conundrum of Coke's ought to have been laughed at, and not made the pretext for his ruin."

Upon these absurd charges, the King's fiat went forth: "We will that you shall be no longer our Chief Justice."

Having been thus arbitrarily disgraced by the King, Coke joined the popular cause and became more distinguished than ever as the champion of the rights of the subject. It was not until after his dismissal from the office of Chief Justice that he wrote the 12th and 13th parts of his Reports "containing a good deal against the High Commission Court and against the King's power to issue proclamations altering the law of the land."¹

The statement that only the King can incorporate is inconsistent with the other statements by Coke and his predecessors still current. Thus: The King is a corporation;² one corporation cannot make another corporation,³ therefore the King cannot make a corporation.

Or again: One corporation cannot make another corporation, but the King makes corporations; therefore the King is not a corporation.

Fond as Coke and those of his time were of this kind of mental gymnastics, it is strange they did not say these things. They are on a par with the reasoning in 2 Bulstrode, 233.

common right and reason, or repugnant, or impossible to be performed, the common law will controul it, and adjudge such act to be void." See also *City of London vs. Wood*, 12 Mod. 669.

"An act of Parliament may not make adultery lawful; that is, it cannot make it lawful for A to lie with the wife of B and dissolve her marriage with B." 8 Rep. at 118 a.

See also *Doctor and Stud.* 154; *Day v. Savadge*, Hob. 87; *Stewart v. Lawton*, 1 Bing. 374; s. c. B. Moore 414. Sergt. Hill, in his copy of the Reports refers to *Forbes Par. Debs.*, vol. vii, 84-85, as mentioning several void acts. On the other hand, for a powerful argument controverting the established power of the Judiciary to declare acts of the legislature unconstitutional and void, in the United States, see the dissenting opinion of Gibson, J., in *Eakin v. Raub*, 12 S. & R. 330. This was as late as 1825.

¹ Campbell, *Life of Coke*, 361.

² 10 Rep. 29 b, *Sheppard on Corps.*, 6.

³ 10 Rep., *Sheppard on Corps.*, 9.

In support of the doctrine that only the King can incorporate, strengthened as it is by the support of Coke's great name, it is claimed that when lords of manors gave these charters, they were acting as the agents or representatives of the King.

"Apart from all these franchises, a lord has a certain jurisdiction over his tenants. This he does not claim by royal grant, nor does he prescribe for it; in its exercise we cannot call him the King's delegate."¹ Therefore, in granting charters that finally became charters of incorporation, lords of manors were exercising their own original powers and were not acting as the agents of the King nor as representatives of his power, nor under any power derived from him.

The precursor of the doctrine that there can be no incorporation without the King's consent—that is, except by the King, directly or indirectly—appears to have been the immemorial doctrine that there could be no gild without the King's license.² We shall find, however, upon examining the origin of guilds, that, like other Teutonic or Anglo-Saxon political and social institutions, they came into unconscious existence through a process of evolution, and were then acknowledged by the law.

The first charter to a gild mentioned by Merewether and Stephens, p. 307,³ is that granted by Henry I, who reigned

¹ 1 P. & M. Hist. Eng. Law, 572.

² Pike, Int. 1 Y. B. 16 Ed. III., XXXII; Madox, *Firma Burgi*, 26. The commonalty of a gild that had not been affirmed by royal charter could not be adjudged to be a body (*un corps*); *i. e.*, a corporation capable of purchasing an estate of freehold. Pike *ibid.*, XLVI, last line, citing 49 Lib. Ass. 8. But the doctrine that there can be no gild without the King's license is as unsound as the doctrine that only the King can incorporate. "Generally speaking, this body (mayor, bailiffs and common council) had the power to establish, and even incorporate, crafts, gilds and companies, and, after such incorporation, retained supervision over these associations." Gross, *Gild Merchant*, 113, giving many examples.

³ "The material in this work is valuable, but many of the general conclusions are untenable." (Gross, *Sources and Literature of English History*.) Once for all I wish to acknowledge my indebtedness to this masterpiece of bibliography.

Henry A. Merewether was born in 1780 and died in 1864. In 1832,

from 1100 to 1135, to Cnithen Gild of London. It is addressed to the bishop, the reeve, and others, giving to the church and canons of Holy Trinity of London the soke of the English Cnithen Gild and the land belonging to them within and without the borough, as the men of that gild had had granted to them, to hold them freely with sac and soc, toll, infangthef, and all their customs as the men of the gild held them in the time of King Edward, and as King William and his father and King William, his brother, had granted them.

By another charter the King gave to the priors and canons of the same church liberty to hold their men and their land of English Cnithen Gild as freely as their ancestors ever held them in the time of his father and brother, and that they might be free of ward and forfeiture, as his proper alms, because they ought to be as free as their ancestors had been. A third grant to the same effect was made to them. It will be noticed that here are no more words of incorporation than are to be found in early charters of lords of manors that finally resulted in incorporating municipalities. In both it is only by implication that we arrive at the conclusion that incorporation resulted from these grants. In both there is no new grant, only a confirmation of what had already been enjoyed.

Merewether and Stephens refer to the originals, Cart. Ant. Nos. 3, 4 and 5. It is unfortunate that they did not give us copies of the originals in this and other instances, instead of giving us only their inferences after their own statement of what they contain. A great work yet remains to be done in relinquishing a practice of five thousand pounds a year at the bar, he became town clerk of London. The very title speaks of itself for the permanence of the *town* as a political institution even when chartered as a city. He resigned in 1859. His official position giving him the opportunity to examine the originals, he produced this monumental work in connection with Archibald J. Stephens, in 1835, being led to it by his previous work, entitled "A Sketch of the History of Boroughs."

An excellent review of the larger work by "M." may be found in 13 Law Mag., 400.

putting into print all such charters—charters to the early trading companies and charters to municipalities from lords of manors that resulted in incorporating them. We do not want to know what different writers have to say about these charters; we want to see the charters themselves, or copies of them in print, to judge ourselves what they mean.

It appears from the language quoted from these charters that this Cnithen Gild had existed from the time of Edward the Confessor (901-925). Henry I did not create the gild by these charters. He recognized it as already in existence, as a separate independent body, not connected with the borough, perhaps what he should call a voluntary association. A step, perhaps the first step, was now taken looking to incorporation, as we know it.

It would not be surprising, upon further search among original charters to gilds, to find among them charters from lords of manors as well as from mayor, bailiffs and common council—charters, not creating gilds, but recognizing and confirming them, and perhaps adding new “liberties” to those heretofore enjoyed. And, as in charters to municipalities, with increase of the King’s power, the King’s charter came to be recognized as of more value than a charter of a lord of a manor. The natural result would follow that Kings’ charters were more and more issued and relied upon, until it was forgotten that originally lords of manors were the original sources of most charters.

It is true that many of the charters granted by lords of manors were not charters of incorporation in the modern meaning of the term. But they were just as much charters of incorporation as were charters of the same kind issued by Kings that, it was afterwards admitted, had incorporated the grantees. The question did not arise in the courts until after King’s charters had superseded—or until they were superseding—charters of lords of manors. Even before Coke’s time it was admitted that incorporation could be effected without words either of heirship or succession. The question is, what was the

intention of the parties? When it became admitted that their intention was to set up a state of things that was to last indefinitely so long as this stipulated fee-farm was paid, the better to carry that intention into effect, the new notion with which the lawyers were becoming familiar, the creation of the *persona ficta*, was adopted, and the law recognized that incorporation resulted from what had been done. Even if not expressly admitted, this is apparent in the cases already cited.¹

Merewether and Stephens, in their voluminous History of the Boroughs and Municipal Corporations of the United Kingdom, p. 1013, refer to the case of the men of Dale as the first case maintaining the modern view as to what constitutes incorporation, according to what they claim incorporation to be, *i. e.*, taking by succession.

If charters of this kind from the King are held to be charters of incorporation, then charters of the same kind from lords of manors—in most cases afterwards confirmed by the King, always without objection to their issuance by the lord of the manor—must also be held to the charters of incorporation. Let us examine some of them.

Charters to the Men of Beverly by the Archbishop of York were confirmed by Kings Henry I. and II. and John.² As Henry reigned from 1100 to 1135 and Henry II. from 1154 to 1189, here are charters of confirmation before 1189, the time of legal memory. Of course the antecedent charters that were thus confirmed were of still earlier date.

Newport in Pembrokeshire has a charter granted in 1192 to its burgesses by Nichols, son of William Fitzmartin, lord of the barony of Kemes, within which barony the borough is comprised. This charter is, or was in 1835, in possession of the lord of Kemes. It was confirmed by Queen Elizabeth in

¹ The men of Dale, Y. B. 7 Ed. IV, Tr. T. 7 (1468) cited in Sheppard on Corps., 32, and The men of Islington, Dyer, 100 (1553); Sheppard on Corps., 37.

² M. & S. 391.

the thirty-fourth year of her reign. These are its only charters.¹

“Except that the burgesses still continue to enjoy common of pasture on the lord’s waste, this charter has no practical application.” This shows that a charter is but little necessary to the existence of a corporation. Note also that the first charter, being a grant to the burgesses, recognizes the borough as already then in existence. It did not create it.

Truro claims to be a corporation by prescription. But it has eight charters, *i. e.*, from Reginald, Earl of Cornwall, no date; from Edward I, 1285; 42 Edward III, 1368; 4 Henry IV, 1402; Duke of Cornwall, 1478; 3 Henry VII, 1487; 31 Elizabeth, 1589; 1 James I, 1685; all of which, except the first and the seventh, are in the possession of the corporation.²

It is a perversion of the doctrine of incorporation by prescription and of the theory of lost charters, in the face of the numerous charters still in existence, as in this case, to speak of such a corporation as a corporation by prescription.

In 1189 William, Earl of Pembroke, with the consent of Isabella, his wife, granted to his burgesses of Kilkenny, in Ireland, certain liberties and privileges too numerous to state.³ That the grant was not the first one, nor a temporary one, appears from the fact that the burgesses and their heirs were to hold the burgages freely and quietly forever at the rent which Galfridus, son of Robert, first established, *i. e.*, 12d. annually for a burgage and its appurtenances. Notice that this charter, a grant to the burgesses, recognizes their prior existence, and this is confirmed by the mention of a rent already established. They had won this position then prior to this grant, that is to say their liberties as burgesses had been secured, and then a

¹ Report of 1835 on the Municipal Corporations of England and Wales, 353, hereafter cited as Rep. on Mun. Corps. It is an invaluable collection of authentic information.

² Rep. on Mun. Corps., 655.

³ M. & S. 359.

charter was granted them. Therefore, the charter did not create the borough.

Hugh Pudsei, Bishop of Durham, granted to his burgesses of Durham freedom from toll and the same free privileges as Newcastle had. This was between 1189 and 1199.¹

Whitby was made a borough by the abbot, and his charter was confirmed by King John.²

Henry de Lucy, Earl of Lincoln, granted a charter "to the free burgesses of Clithroe and their heirs." In 1229, Edward I confirmed all the liberties and free customs thus granted.³ With all his vexatious use of *quo warranto*, neither in this nor in other cases did this King ever claim that "only the King can incorporate," and that these charters were void.

Newport was first granted a charter by Richard de Redvers, Earl of Devon, Lord of the Isle of Wight, *temp.* Henry II, no date, but between 1154 and 1189,⁴ when the island was not properly a part of the kingdom, it may be urged. Twelve pence was to be paid annually by each holder "*de messuagio suo*," in lieu of all feudal due, and for this a grant was made to the burgesses in fee. A second charter was granted by Isabella de Fortibus, Countess of Albemarle and Devon, *temp.* Ed. III, no date, but between 1327 and 1377, repeating the former grants and raising the rents. It does not appear that this was done with the consent of the tenants. This shows that these charters were then looked upon as grants of grace only. This grant was confirmed 26 Ed. III, the sovereignty of the island having been granted to the King by Isabella.⁵

A charter was granted by William de Valencia and the Countess Johanna, his wife, exempting the burgesses of Tenby from stallage, passage, tolls, etc., and granting right of common. A charter from Aldomar de Valencia, granting also a

¹ M. & S. 365.

² M. & S. 388.

³ M. & S. 545.

⁴ This was before the time of legal memory.

⁵ M. & S. 771.

market, confirmed this charter. This was confirmed, with additional grants, by a charter by Lawrence de Hastings. This in turn was confirmed by charters of Edward III. and Richard II. The borough was formally incorporated as a body corporate and politic by Elizabeth in 1581.¹

Plympton Earle claims to be a corporation by prescription, although it has charters from Baldwin de Redvers, Earl of Devon, 1241; the Countess of Albemarle and Devon, *incer. temp.*; 13 Ed. III, 1339; 9 Richard II, 1385; 2 Henry IV, 1400; 1 Henry V, 1413; 19 Henry VI, 1440; 17 Edward IV, 1477; 44 Elizabeth, 1601; 4 W. & M., 1692;² all, it will be noted, since the time of legal memory (1189), and all, from the first one to the charter of Elizabeth, are charters of confirmation with added liberties from time to time, and are not charters of original grant. There are many towns and boroughs in England with charters that they disregard, claiming that they are corporations by prescription, and the claim has always been admitted. This shows how little value was placed upon a charter.

The borough of Chepping Wycombe is situated within the town and parish of the same name, but is not co-extensive with it. The manor of Wycombe was granted in 1204 to Allan Bassett by King John for 20 l. a year and services of one knight. This grant was confirmed by an *inspeximus* charter of 13 Henry III in 1229. In 1237 Allan Bassatt granted the borough to the burgesses with the rents, markets, fairs, etc., for 30 l. and one mark per annum, saving reasonable aids to Allan when the King talliaged his demenses, Allan acquitting the burgesses of the payment of 20 l. a year to the King and the service of one knight, and to have the dung in the streets. This charter was ratified and confirmed by the King in the same year, and again was confirmed 13 Edward I, 1285, and again 1 Henry IV, 1400. A charter of 6 P. & M., 1558, recited that as well by charters of preceding sov-

¹ M. & S. 817 and 818.

² Rep. on Mun. Corps., 599.

ereigns as by customs from time to time whereof memory of man doth not exist, the town of Chepping Wycombe had always been a market town and perpetual free borough and incorporated, etc. All former liberties, etc., were ratified and the town was constituted a free borough corporate, etc., the mayor, bailiff and burgesses to elect two burgesses to Parliament. Other charters were granted 40 Elizabeth, 1598; 6 James I, 1609; 15 Charles II, 1675.¹

In 1209 Allured, Prior of Innistock, granted a charter to the burgesses with "the liberties which burgesses ought to have and ought to confer, to-wit"²

This shows that by this time there had come to be a well recognized understanding as to the liberties which burgesses ought to have as well as what liberties a lord of a manor ought to confer. Many charters to boroughs were made "with all the liberties belonging to them, as was the custom of other good boroughs." This points to "liberties" as originating in customs and not in grants, but rather that the grants were but confirmation of liberties already won, and were but further assurances of title. Study of what we can learn of these original charters furnishes abundant further evidence to sustain these views. Of course, by the latter charters, it is admitted that these liberties, originating in customs, were enlarged by additional grants from lords of manors and from Kings.

Newton had its first charter from Aymar, Bishop of Winchester, in 1256. It was confirmed by an *inspeximus* charter of Edward III and by charters of confirmation of Richard II, Henry V and other Kings.³

¹ Rep. on Mun. Corps., 41.

² M. & S. 418. Among the liberties specified is that they and their heirs were to hold their burgages freely, quietly and hereditarily with three acres of land assigned to each burgage, rendering annually 12d.—6d. at Easter and 6d. at Michaelmas. It was just such charters as these that were held subsequently to incorporate when granted by the King. Equally so should they be held to incorporate when granted by the lord of the manor, especially as subsequent charters of the King confirmed just such charters of a lord of a manor. I cannot find the precise point in any reported case.

³ Rep. on Mun. Corps., 793.

Rochester had twelve royal charters, the first one, by Henry III (1216 to 1272), granted the borough in fee-farm for 251 sterling annual rent, to the citizens and their heirs. It is a sample of virtual incorporation, without words of succession. A long line of royal charters confirms the first one granted.¹

Yarmouth had its first charter from Baldwin de Redvers, *temp.* Henry III. Its second charter, 8 Edward I, 1280, was one of *inspeximus* and confirmation. The first charter grants "all the liberties and free customs which free burgesses ought to have." The charters are followed by a long line of royal *inspeximus* charters.²

Lydd, a member of the town and port of New Romney, one of the Cinque Ports, has a charter, 5 Edward I, 1272, confirming the former liberties and privileges enjoyed in the time of Edward the Confessor and William the Conqueror. This shows the antiquity of the liberties and privileges, charters of confirmation of which resulted finally in incorporation. This charter of 1272, the first one of this town, is not a grant of new or original liberties; it is a recognition and confirmation, with an assurance of the right of future enjoyment, of liberties and privileges already at that time more than three hundred years old.³

The first known charter of Christchurch, Twineham, is from Baldwin, Earl of Exeter, exempting his burgesses from certain tolls and customs. (Then there were burgesses and a borough before the first charter). The second charter is from Baldwin, son of Lord Baldwin de Redvers, to his burgesses, their heirs or successors. Here is a variant before unknown. It shows that the words "heirs" and "successors" were looked upon as synonymous. This charter granted tolls of the fair, common of pasturage, etc. It was recited and confirmed in a charter of 8 Edward II, 1315. An entry of April 1, 1665, states that a charter of Baldwin Rivers (*sic*), one of confirma-

¹ Rep. on Mun. Corps., 843.

² Rep. on Mun. Corps., 915.

³ Rep. on Mun. Corps., 1013.

tion of Edward VI, and one of Henry VI, were delivered into the Mayor's hands to be sent to London for use in the Exchequer. By another entry in 1669 it appears that the charters were delivered to the Mayor "to be improved for the good of the corporation," and that they were returned in 1670. A charter of Charles II confirms all former grants and charters. Such charters of *inspeximus* and confirmation by the King of previous charters of lords of manors show that was no claim that no one but the King can incorporate. This was long after Coke's dictum.¹

By a charter supposed to have been granted about 1300, Guiydo de Brion, the younger, granted to his burgesses of Gallacharn all the good laws and customs which the burgesses of Karmarden then used or enjoyed, preserving the rights and measures which they had in the time of Guiydo de Brion the elder. This is the only charter the borough of Gallacharn, now Loughharne, has, yet it has never been claimed that it is not validly incorporated, nor that it is a corporation by prescription.²

In 1316, Abdomari de Valence, Earl of Pembroke and lord of Wexford, granted a charter to his burgesses of Wexford. It is true this was not a charter of incorporation, but it was the first step in what culminated in an acknowledgment that incorporation has resulted in what had been done.³

In 1321, Otes de Bodiyan, Lord of Pendryon and Loe, granted a charter to East Loe, mentioning reeve, mayor and burgesses as then in being. There is a previous charter by one of his ancestors, and later charters 29 Elizabeth, 1587; 21 James I, 1623; 1 James II, 1685.⁴

In 1339, Baldwin de Redvers granted by charter their town to the burgesses of Plympton, with the market, fair and everything thereto belonging, to hold at a yearly rent, as fully and

¹ Rep. on Mun. Corps., 1253.

² Rep. on Mun. Corps., 287.

³ M. & S. 603.

⁴ M. & S. 253. Rep. on Mun. Corps., 533.

freely as the citizens of Exeter, and that the burgesses should be free of toll.¹

In 1340, Hugh le Despencer, lord of Glamorgan, granted a charter to the burgesses of Cardiff and their heirs.²

Between 1331 and 1349 David Bruce granted a charter to his faith-burgesses of Iwerness and the community of the borough, demising to them at fee-farm and in fee forever all the borough with Drekees in the county of Iwerness to hold to the community and burgesses, and their heirs forever, in fee and inheritance, etc., with all liberties, etc., and appurtenances to the town belonging, rendering therefor eighty marks. The lack of the word "successors" has not prevented this borough from having been considered properly incorporated. We cannot therefore agree with Merewether and Stephens³ that there was no incorporation because the magical word "successors" was not used.

Aberavon has a charter from Edward le Despencer, dated 1372. It is not treated as valid and the borough is called a corporation by prescription. Were the liberties named in the charter broader than those actually enjoyed, it may be doubted whether the charter would be considered invalid. In 1372 the charter was the statement of the liberties then enjoyed. Having afterwards enlarged them through long continued custom, it became finally more convenient to claim, although contrary to fact, that it is a corporation by prescription. This shows that even in England a charter of incorporation is not necessary to a municipal corporation and recognition of valid existence.⁴

In 1411, Thomas de Montacute, Earl of Salisbury, by charter confirmed former grants to the burgesses of Poole and their heirs. This is an instance of a charter of confirmation by a lord of a manor.⁵

¹ M. & S. 657.

² M. & S. 704.

³ Rep. on Mun. Corps.

⁴ Rep. on Mun. Corps.

⁵ M. & S. 794, who draw their usual incorrect conclusion that there was no incorporation here, because no words of succession were used.

As to Usk. "A copy of a Latin charter granted by Edmund de Mortimer, Earl of March and Ulster, Lord of Wigmore and Clare, was stated to have been found amongst the papers of the late recorder of the borough. This copy was in the recorder's handwriting. The charter is dated February 1, 1416. It recites and confirms a former charter of Roger de Mortimer, Earl of March and Lord of Usk, dated July 26, 1398. . . . The town has not been governed within time of memory under this or any other charter,"¹ although many of its charters of confirmation are in existence. A municipal corporation may exist, therefore, independently of its charters.

Llantrissant has an imperfect copy in Latin of a charter of Richard, Earl of Warwick, of about 1425, but it is disregarded. It has no other charter.²

In 1527, Arthur Plantagenet, Viscount Leslie, vice-admiral of England, reciting former grants, including one from William de Montacute, confirmed by Henry VIII, gave a charter to Poole, ratifying and confirming all former grants.³

This is an instance of a lord's charter confirming a King's charter.

West Loe has two charters, the first one having been granted by Richard, Earl of Cornwall, the second by Elizabeth in 1574.⁴

Oakhampton has a charter granted by Courtney, Earl of Devon, n. d., and other charters, 21 James I, 1623; 36 Charles II, 1684.⁵

The city of Exeter claims to be a corporation by prescription, a strange claim, for it has twenty-six charters, including

¹ Rep. on Mun. Corps., 415.

² Rep. on Mun. Corps., 313. It is unfortunate that many charters said in this report to be copied and to accompany the various sub-reports embraced in the work, were not printed. We are told what these charters contained, instead of being allowed to see them, in which case we could form our own conclusions.

³ M. & S. 1125.

⁴ Rep. on Mun. Corps., 539; Rep. on the case of the Borough of West Loe, H. A. Merewether, 1823, p. 37.

⁵ Rep. on Mun. Corps., 557.

two from Richard, Duke of Cornwall.¹ Some of these charters would seem to antedate the time of legal memory, 1189, but, unfortunately, although this report tells us something about these charters, it does not print them.

Liskeard has thirteen charters. The first and second were granted by Edward, Earl of Cornwall.²

During the reign of Richard I (1189 to 1199) a charter was granted to Launceston, in Cornwall, under the name of Dunheved, by the King, "and as this charter expressly grants that Launceston should be a free borough, and no allusion is made to any previous privileges or customs, the probability is that it was at this time first so created."³

Assuming now that this is the first charter to this town, it furnishes us with an illustration of another step in the development of municipal incorporation in England. The first charters were, as we have seen, acknowledgments of "liberties, etc., already won, with sanction of their continuance in the future in return for a fee-farm rent. Then came charters like this one, granting the free exercise in the future of like liberties to a new town or borough, also in return for a fee-farm rent. Many of these new grants were "to those inhabiting or who should thereafter inhabit" the town.

In the New England colonies, the settlers, bringing with them a knowledge of town government, the result of centuries of its exercise in England, but bringing no lords of manors to grant them charters, fell naturally into town organization and town government, sometimes under their own written form of government, sometimes without it. They sent their representatives to their General Assembly when the population increased so that it was no longer feasible or convenient for them all to meet there, and sometimes, as in Massachusetts, this was done without authority of their home charter. Then the settlers in later settled towns were allowed also to send

¹ Rep. on Mun. Corps., 487.

² Rep. on Mun. Corps., 525.

³ M. & S. 368.

their representatives to the General Assembly, and finally the General Assembly authorized the settlement of new towns, whose representatives were allowed the same powers, rights and duties as the representatives of the first towns. The town system was recognized by the General Assembly; it was not created by it. In "Town, Township and Tithing," p. 279, by W. F. Allen (Essays and Monographs, 1890), it is contended, p. 284, that towns in England were an integral part of the constitutional machinery of the kingdom, being continuous areas of land embracing the whole country, with self-government in local concerns, in organic relation to the larger representative bodies, and that when the American colonies were planted the colonists carried the town system with them.

In 1284, the previous charters of Plympton were confirmed to the burgesses and their heirs.

The same year Nottingham was seised by the King for certain transgressions. A new charter was afterwards granted to them, running to the burgesses and the commonalty to enjoy their former privileges, so that they and their successors should render to the King his fee-farm rent. Evidently, the crown lawyers made no distinction between "heirs" and "successors."

At p. 594, Merewether and Stephens give an instance of a charter granted in 1324 "to the burgesses of Dorchester that they might have their town at fee-farm." Again we are under the serious disadvantage of not having before us a copy of the whole charter. From the part given it does not appear that either the word "heirs" or "successors" was used. If not, the case is similar to that of the men of Dale and that of the men of Islington, already cited.

Let us examine briefly a few instances in which both words "heirs" and "successors" were used.

In 1314, a charter was granted "to the mayor and the citizens, their heirs and successors, citizens of the city of Dublin."¹

¹ M. & S. 601.

In 1318, a charter was granted "to the citizens, their heirs and successors, citizens of the city of Cork."¹

In 1327, a charter was granted to the citizens of London, "their heirs and successors."²

In 1334, a confirmation of liberties was made "to the burgesses of Nottingham and their heirs and successors, burgesses of the same town."³

In 1374, Edward III granted a charter "to the mayor, sheriffs and commons, and their heirs and successors, burgesses of the town, at fee-farm forever."⁴

The same King granted their town to the burgesses of Bala, to hold to them, "their heirs and successors, burgesses of the town, at fee-farm forever."⁵

In 1407, Henry V confirmed the privileges of the burgesses of Atheboy, in Ireland, to "their heirs and successors."⁶

Drogheda received a similar charter the same year.⁷

In 1422, Richard de Beauchamp, Earl of Worcester, confirmed prior charters of Hugh le Despencer to Cardiff, and made further grants to them, "their heirs and successors."⁸

The same year Isabella, Countess of Worcester, granted additional privileges "to the burgesses of Cardiff, their heirs and successors."⁹

In 1450, Richard Nevill, Earl of Warwick, granted "to the burgesses of Cardiff, their heirs and successors," certain specified liberties, and in the same charter he made other grants "to the burgesses, resiants and their successors" plainly showing that a grant to A and their successors did not differ from a grant to A and their heirs and successors.¹⁰

¹ M. & S. 603.

² M. & S. 629, 631.

³ M. & S. 656.

⁴ M. & S. 693.

⁵ M. & S. 704.

⁶ M. & S. 810.

⁷ M. & S. 811.

⁸ M. & S. 833.

⁹ M. & S. 833.

¹⁰ M. & S. 942.

The record concerning the borough of Farnham¹ is most instructive.

William of Warnflete, Bishop of Winchester, by letters patent, in 1452, granted and demised to the burgesses of Farnham the whole borough of Farnham with the ville adjacent and their appurtenances, excepting the hue and cry for murder, the persons and chattels of felons, the escheats of their lands and tenements, together with the services of William le Parker and the others who hold of the Bishop *in capite*. He confirmed to them the liberties and free customs which they had anciently and to that time enjoyed, particularly :

1. A fair on All Saints' Day, yearly.
2. The right to elect and remove their bailiff without hindrance by the Bishop.
3. The assise of ale and bread, with power of punishing defaults by fine, but not otherwise.
4. All manner of tolls.
5. Exemption from suit and service at the Bishop's court, except only what belonged to the lord of the hundred at law-day at the castle of Farnham.
6. Power to issue attachments, summonses and distresses within the burgh and vill, not belonging to the bailiff of the Bishop's liberty. For these privileges they were to pay to the Bishop and his successors, by the hands of the bailiff of Farnham, twelve pounds of silver annually, by two equal portions, in lieu of nine pounds, which had hitherto been usually paid. This charter was surrendered or revoked by Bishop Horne, who gave the town a new charter in 1566. This new charter was considered of so little value that the vacancies in the number of burgesses not having been filled, William Shotter, an attorney-at-law, became the sole surviving bailiff and the only remaining member of the corporation about 1790. He was indicted for not repairing two bridges at Gilford, it being alleged that the bailiffs of Farnham were bound to repair them. Having been put to considerable expense, Shotter surrendered

¹ Rep. on Mun. Corps., 732.

the charter to the Bishop, sending him with it all the records of the castle. The receipts were £36 11s. 5d. in 1776, and £37 21d. in 1777, derived principally from quit rents and market tolls. The disbursements were £33 1s. 9d. in 1776 and £34 6s. 6d. in 1777, principally for repairs of the market house, payments to servants and the quit rent paid to the Bishop. The bailiffs seem to have divided the surplus.

Important conclusions may be drawn from the birth, life and death of this town :

1. A corporation existed without incorporation by the king.
2. It existed without formal words of incorporation or words of succession.
3. But not even the first charter created the corporation. It confirmed liberties and free customs already long in existence and it recognized an already existing fee-farm rent and continued it *in futuro*, increasing it in return for increased liberties granted. There was then a corporation already in existence, not a corporation according to the criterion of a later time, but what we may call a rudimentary corporation.
4. The first of these two charters was not a charter of original grant, but only confirmed the continuance of liberties already enjoyed and agreed to be paid for, adding new ones, in consideration of which, as we should say now, but the thought was unknown to the incorporators; the old fee-farm rent of nine pounds was raised to twelve pounds.
5. The last charter was surrendered to or was revoked by Bishop Horne. If surrendered (and we read of the surrender of other charters), it shows that the relationship entered into was looked upon as one terminable at the will of the parties, and therefore no true adequate conception had yet obtained of the functions and meanings of the new *persona ficta*, the corporation, that had come into existence. If revoked by the Bishop, (and we read of the revocation of other charters) it shows that the idea had not taken root that a charter granted for a valuable consideration is irrevocable without the consent

of the grantees, or as the result of legal trial for cause shown, as for instance, for failure to pay the stipulated fee-farm rent.

6. A grant of various liberties as above stated in detail, without words expressing the intention to form a corporation, is not enough, according to present standards to constitute a corporation. Yet at some time in the past, exactly when it is impossible to determine, this body, and more like it, came to be considered as corporations. No act of the King was necessary to create a corporation, but only the agreement, at first only an implied one, to pay the fee-farm rent in return for acknowledgment of the right to continued enjoyment of liberties already won, or granted for future enjoyment, by the lords of manors of England, whether lay or ecclesiastic, or from the King as from his own domain, was enough. Indeed, the mere continued enjoyment of liberties, privileges, customs and immunities, acknowledged by charter, furnishes us with the fundamentals of municipal incorporation.

In this case, as the fee-farm rent was made payable to the Bishop and his successors, it was to continue without limit after the death of the Bishop. Necessarily, therefore, the grantees and their successors, even though the latter were not mentioned, must have been intended as entitled to enjoy the liberties confirmed or granted so long as they continued to pay the stipulated fee-farm rent. This case, with many other cases, illustrates the incorrectness of the main proposition of Merewether and Stephens that there can be no incorporation without the magical word "successors" with the formal statement that a body corporate and politic is created by the grant.

7. It strikes us as very remarkable that at so late a date as 1790 no strict conception had gained acceptance as to what a corporation is and how it may be dissolved, judging from the fact that the surrender of the charter and the records by an officer of the corporation, even though he was the last member, was enough to cause the corporation to cease to exist.

The following anecdote well illustrates the influence of the lord of the manor over the townsmen and burgesses, and also

the influence of the King over the lords of manors. During the reign of Charles II. (1660 to 1685) Joseph Williamson, Secretary of State, wrote to Lady Anne, widow of the Earl of Dorset and Pembroke, and who possessed the borough of Appleby, suggesting the name of a candidate as member of Parliament, satisfactory to the government. She answered:

“I have been bullied by an usurper, I have been neglected by a court, but I will not be dictated to by a subject. Your man shan’t stand.

ANNE DORSET,
Pembroke and Montgomery.”

The “usurper” was Cromwell. Evidently, although loyal, the King had ignored Lady Anne at the Restoration. This rankled in her bosom, and she used this opportunity to let the King know it and to take her revenge.¹

This influence of the lord of the manor and the small amount of real liberty in Tudor times the burgesses enjoyed of choosing their own representative to Parliament, is well illustrated by the following:

“In the Chappel of the Rolls in the Bundle of Returns of Parliament Writs, in the 14th of Queen Elizabeth:

“To all Christian people to whom this present writing shall come. I, Dame *Dorothy Packington*, widow, late wife of Sir *John Packington*, knight, lord and owner of the town of *Aylesbury*, sendeth greeting. Know ye me, the said Dame *Dorothy Packington*, to have chosen, named and appointed my trusted and well-beloved *Thomas Lichfield* and *George Burden*, Esquires, to be my burgesses of my said town of *Aylesbury*. And whatsoever the said *Thomas* and *George*, burgesses, shall do in the service of the Queen’s Highness in the present Parliament to be holden at *Westminster* the eighth day of *May* next ensuing the date hereof, I, the same Dame *Dorothy Packington*, ratify and approve to be my own act as fully and wholly as if I were or might be present there. In

¹ M. & S. 1800.

witn  ss whereof, to these presents, I have set my seal the fourth day of *May*, in the 14th year of the reign of our sovereign, Lady *Elizabeth*, by the grace of God, of *England, France and Ireland*, Queen, Defender of the Faith, etc.”¹

With these charters before us the inquiry naturally suggests itself whether there is anything in the fiction of charters “lost by time and accident.” We can only arrive at the conclusion that it is a notion of comparatively modern date, the effect of which has been to conceal the ignorance and indolence of those promulgating it.

When John de Waltham, Master of the Rolls, *temp.* Rich. II (1377 to 1399), left office, he delivered all the records in his possession to his successor by an indenture minutely specifying every document. When Merewether and Stephens wrote their voluminous work in 1835 they found that every document there mentioned was still extant.² Considering this fact, as well as the minute particularity with which every former charter is specified in *inspeximus* charters succeeding them, considering also the great number of charters in existence, before as well as after the time of legal memory, 1189, and also the great number of charters in existence in towns that claim to be corporations by prescription, some instances of which we have examined, it is in defiance of probability and fair presumption to assume that any charters have been lost or that any ever were in existence not now to be traced, either by original, by copy or by *inspeximus*.

Particular attention is called to the fact that there exist in England municipal corporations that are called corporations by prescription although they have a string of charters among their archives. As they exercise liberties, etc., not mentioned in any of their charters, it is more convenient for them to claim that they are corporations by prescription. They are like the French philosopher who was told that his theory was not sup-

¹ Appendix, p. 35, No. 23, of Brady on Boroughs, 2d ed., London, 1722, folio.

² M. and S. 774.

ported by the facts, whereupon he replied: "Then so much the worse for the facts."

This time-honored fiction of prescription may have answered well enough centuries ago, when the facts were not known, but it is now out of date. With the study now given to early charters and other documents, now available in print, that were formerly inaccessible except to the mousing antiquary, we know what our predecessors did not know—that this fiction is incompatible with the facts. There is nothing to show that Coke ever studied these charters nor that he knew that municipal corporations in England had come into unconscious being by a process of evolution and development through charters from lords or manors and from kings holding manors as of their own demesne, confirming the enjoyment of liberties already won and long enjoyed, and sometimes extending such charters, serving as models for charters to new towns, giving them the right to the enjoyment of similar liberties *in futuro*, all in return for a stipulated fee-farm rent. With their reverence for precedents of cases decided by the courts, lawyers of old, like lawyers of to-day, neglected other sources, like charters and customs developing into new institutions. For these reasons Coke failed to see that in his own time municipal corporations were springing into existence in the American colonies of English origin across the sea, sometimes, in the absence of lords of manors or king, through conscious self-institution (by their own written agreements), sometimes through unconscious self-institution, as when the first settlers, through knowledge of town government brought with them from England, fell at once and naturally, but without any authority from England, into self-government through town organization, these towns being afterward acknowledged by the local legislature as valid corporations, from which it follows that they were not created by the legislature.

It must not be thought that I am ignoring the undoubted power of the King to grant charters in the exercise of his royal prerogative as well as in the exercise of his power as lord of a

manor held as of his own demesne. But the same difficulties meet us when we examine royal charters of this class. We find the same difficulty in determining when incorporation really resulted, through such charters. We find that cities as well as towns grew out of charters from lords of manors as well as out of charters from the sovereign, although neither contemplated incorporation, nor knew what it was.¹

As a typical case, let us examine the charters of London.

Its first charter was granted by William the Conqueror, who marched upon London after the battle of Hastings, or Senlac, as we are now told we must call it. It is written in Anglo-Saxon, on a slip of parchment six inches long and one inch broad, still preserved among the city archives. Translated into English it is as follows:

“William the King friendly salutes William the Bishop and Godfrey the portreve, and all the burgesses within London, both French and English. And I declare that I grant you to be all law-worthy as you were in the days of King Edward; and I grant that every child shall be his father's heir, after his father's days; and I will not suffer any person to do you wrong. God keep you.”²

Brady³ chooses to call this a “Protection” rather than a charter, and he has been followed by Hume⁴ and by Dalrymple⁵ who calls this a letter of protection.

“There are two things remarkable in this *charter* (as 'tis call'd). First. The *burgesses* were declared all to be *law-worthy*. Secondly. That their *children* should be their *heirs*. Now, there were two *ways* of being *law-worthy*, or having the benefit

¹ “The liberties of the first cities must often have been mere favors on the part of the lords who owned the soil and protected the dwellers upon it. Later, these liberties were the result of bargains between separate powers.” 1 Kemble, *Hist. of Saxons*, 307.

² *Hist. Charters, &c., of London*, Birch, London, 1887. See the original in *Saxon, 2 Mun. Gild. Lond.*, pt. 1 (*Liber Albus*), ed. by Riley, p. 246.

³ *Treatise on Cities and Boroughs*, 16.

⁴ *Hist. of Eng.*, App. 11.

⁵ *Feudal Property*.

of the law. By the *state* and *condition* of men's *persons*, so almost all *free-men* had the free benefit of the law, but men of *servile condition* had not, especially such as were *in dominio*, in *demeasn*, for they received justice from their lords, were *judged* by them in most cases, and had not the true benefit of the law; so neither, as to the second *observable* in this charter, could their *children* be their heirs, for they *held* their *lands* and *goods* at the *will* of the *lord*, and were not sure to enjoy them longer than they pleased him. The second way of being *law-worthy* was, when men had not committed any crimes, or done anything for which they forfeited the law and deserved to be *outlawed*, then they were said to be *legales homines, recti in cuna*, or law-worthy, but not so properly as in the first sense of the word.

“From hence we may make a very probable *conjecture* at the true meaning of this *protection* or *charter*. It is not to be doubted but that the *burgesses* of *London* had obtained of the *Saxon* kings several *liberties* and *immunities*, amongst which this was one, to be so far free, as not to be *in dominio*, or so *obnoxious* to any *lord*, but that by *reason* of their state and condition, they might be *law-worthy*, that is, have the *free benefit* of the *law*, and had likewise further obtained (if it was not then a consequence of their *personal state* and *condition*) that their *children* should be *heirs* of their lands and goods, and in both these were *free* from the *injuries* and *unreasonable demands* and *power* of any severe lord. So that all the application made by their Bishop William (he had also been Bishop of *London* sixteen years in King *Edward's* time), and not unlikely by *Godfrey*, the *Port-Reve*, to the *Conqueror* for them, was that their *state* and *condition* might be the same it was in King *Edward's* days and that their *children* might be their *heirs*, and they might in *both* be *protected* from the *injury* and *violence* of *imperial lords*, which, by the prevalency of their *bishop*, were granted; considering that by the foregoing instances it is clear that many or most *burgesses* of other boroughs were *in dominio* either of the *King* or some other *lords* or

patrons in the time of *King Edward*, and that the *Londoners* might fear the *Conqueror* would break in upon their *privileges* and reduce them to the same *condition*, this explication seems to discover the *genuine* meaning and very *import* of this *protection*, or, as 'tis commonly called, *charter*."¹

The so-called second charter of William to London has been erroneously translated by careless writers for centuries; for, instead of being a charter to London, it is plainly a charter to Deorman, a man whose name these writers had not wit enough to make out. It is as follows:

"William the king friendly salutes William the bishop and Swegn the sheriff and all my thanes in Essex, whom I hereby acquaint that I have granted to Deorman, my man, the hide of land at Gyddesdune, of which he was deprived, and I will not suffer either the French or the English to hurt him in anything."²

The next or so-called third charter to London was granted by Henry I, about 1100.

The accidental death of William Rufus afforded his young brother, Henry, then in England, opportunity to secure posses-

¹ Brady on Cities and Boroughs, 16.

² Hist. Charters, etc., of London, Walter de Gray, Birch, p. 2. For the long time current mistranslation of this charter, see Charters of London, Luffman, page 4; "William the king friendly salutes William the bishop and Swegn the sheriff and all my thanes (or nobles) in East Saxony, whom I hereby acquaint that, pursuant to an agreement, I have granted to the people, my servants, the hyde of land at Gyddesdune, and also that I will not suffer the French or the English to hurt them in anything."

It was a strange want of ordinary capacity to translate that could thus transform for centuries the name of the grantee Deorman into *dear men* (the people, my servants). What must we conclude as to the Saxon scholarship of centuries that made and repeated such a blunder, and continued to print this charter, even down to the present time, as one of the muniments of the city. See, for instance, even a work of such high repute as Norton's Commentary on the Laws, etc., of London, page 527, edition of 1869, where he translates this as a grant by the king to *his dear man* or *men* (friends) of this certain piece of land at Gyddesdon!

Birch, p. 13, says the city has no claim to this charter, except as a title-deed to land which must have passed into the possession of the city authorities, the charter going with the land.

sion of the royal power. He seized the royal treasure at Winchester, and, hastening to London, got himself suddenly acknowledged King, and immediately assumed the exercise of royal power. It was this King who granted the so-called third charter to the city of London, for having usurped the crown, in prejudice to Robert, his eldest brother, he well knew how difficult it would be to secure himself upon the throne without the assistance of the Londoners. To engage them, therefore, to support his government he conferred the advantageous privileges on the citizens that are contained in the charter."¹

This charter, after the usual clause of greeting, says :

"Know ye that I have granted to my citizens of London, to hold Middlesex to farm for three hundred pounds, upon account to them and their heirs ; so that the said citizens shall place as sheriff whom they will of themselves ; and shall place whomsoever, or such a one as they will of themselves, for keeping of the pleas of the crown and of the pleadings of the same, and none other shall be justice over the same men of London ; and the citizens of London shall not plead without the walls of London for any plea. And be they free from scot and lot and clanegeld, and of all murder ; and none of them shall wager battle"²

There was no intention to create a corporation when this charter was granted, for at that time and for centuries afterwards, municipal incorporation was unknown in England. Yet, bearing in mind the decisions in the case of the men of Dale in 1468 and in the case of the men of Islington in 1553, this charter is remarkable as one of the early examples of a precursor of what finally became charters of incorporation. It merits careful study, therefore. The difference between the two charters of William the Conqueror and this charter is enormous. At one stride we pass from a letter of protection and a grant of a hyde of land at Gyddesdune to one man, to a grant of all Middlesex to the body of the citizens of London,

¹ A New History of London, John Northouck, London, 1773, p. 27.

² Hist. Charters, &c., London, Birch, 3.

in return for which they and their heirs are to pay an annual fee-farm rent of £300 without limit in time. The rudimentary corporation is apparent to us, although it was not apparent to those unwittingly taking part in its formation.

“By this charter the citizens were relieved from several oppressive laws which were inconsistent with the freedom which commerce requires. They were eased of the tax called Danegelt which had been imposed on the nation by Ethelred to defray the charges of repelling the Danish invasions and to raise the money with which he meanly purchased temporary cessations of their inroads. Taxes are not easily relinquished even when the occasion ceases, and the kingdom at large continued to pay the tax of Danegelt until the reign of Henry II. They were also freed from trials by battle. The judicial combat at that time was practiced all over Europe, and, being considered as an appeal to Providence, was received as one of the happiest modes of deciding the truth of disputed facts and even abstruse points of law. No one could decline the challenge: priests, women, minions and infirm persons, not able to handle arms themselves, were obliged to produce champions to maintain their causes. The judge himself was not exempted; for if any party accused him of perverting justice and threw down his gauntlet, the judge could not, without infamy, refuse to accept the defiance. The practice was with great difficulty discouraged; a trial by combat was appointed in 1571, but Queen Elizabeth interposed and prevented it; another instance occurred so late as the reign of Charles I, but was also accommodated without bloodshed (see Robertson's Charles V, vol. I, where this subject is amply discussed). Prisoners at the bar are still questioned how they choose to be tried, though there is now but one answer and no choice remaining. Another clause freed the citizens from the arbitrary power of the portreve, who had authority to quarter the king's domestics at discretion upon the citizens.”¹

¹ A New Hist. of London, Noorthouck, p. 27.

Continuing our search for the first charter that may be said to have incorporated London, we reach the sixth charter granted to it by 31 Henry III in 1253.

It is the first charter of London that mentions the mayor and commonalty and recognizes their corporate acts under their common seal. Yet how can we call it a charter of incorporation when the term itself was as yet unknown? See Hist. Charters &c., of London, Birch, p. 34.

The first charter of Charles I, 1638, is remarkable on many accounts. It is an *inspeximus* charter of the broadest character. In thirty-nine separate clauses it states, "We have seen the charter of ————," then reciting such charter in full each time, except in three instances where the charter inspected is summarized, it ratifies and confirms them all.

The first clause thus ratifies and confirms the first charter of William the Conqueror, who is here called "Lord William our progenitor, formerly King of England."

The second clause ratifies and confirms in the same way the so-called second charter of King William. This is instructive, as showing that all the way down through the ages there was not one man among all the custodians of these charters who, as yet, had been able to translate it correctly.

After having thus in full set forth all the preceding charters granted to the city of London, charters of the most diversified kinds and yet not one of which would pass muster as a true charter of incorporation according to the more exact standard of our times, this charter goes on: "Know ye now that we, deeply considering and calling to memory the good and laudable services performed by our beloved and faithful subjects, the said mayor and commonalty and citizens of the city of London, which we graciously accept; and from our soul affecting the good and happy estate of our said city, to increase and enlarge, with the greatest favour and grace we can, and to establish, with all care and diligence we can, the rule and government of our said city, of our especial grace, and from our certain knowledge and mere motion, and for divers other good causes and

considerations especially moving us at present; do accept and approve of, for us, our heirs and successors, as much as in us lies, all and singular the letters patent, charters and confirmations aforesaid, and all and singular gifts, grants, confirmations, restitutions, customs, ordinances, explanations, articles, and all other things whatsoever in the same letters patent or charters (except as hereinafter excepted), and all and singular lands, tenements, offices, jurisdictions, authorities, privileges, liberties, franchises, quittals, immunities, free customs and hereditaments whatsoever which the said mayor and commonalty and citizens of the city of London, or their predecessors, by the name of mayor and commonalty and citizens of the city of London, or by the name of the mayor and aldermen, citizens or commonalty of London, or by the name of mayor and citizens of the city of London, or by the name of the mayor and commonalty of the city of London, or by the name of the citizens of the city of London, or by the names of barons of London, or by any other whatsoever, by reason and force of the said letters patent, charters, or confirmations, or by use or prescription, or any other lawful means at any time or times heretofore have had, ratified and bestowed; and all those we ratify and confirm by these presents to the said mayor and commonalty and citizens of the said city of London and their successors. . . . And to the intent the said mayor and commonalty and citizens of the said city, and their successors in time to come, may safely, freely and quietly hold and enjoy to them and their successors forever, all and singular the premises in the said letters patent or charters before mentioned or intended to be given or granted by the same; and for the intent that no ambiguity, controversy, doubtful construction or question of or about the premises, may henceforth arise, but be altogether taken away. We, for the consideration aforesaid and of our special grace, for us, our heirs and successors, do give and grant to the said mayor and commonalty, and citizens of the city of London, and their successors forever, all and singular, the manors, lands, tenements, offices, fees, rewards, liberties, privileges, jurisdictions, immu-

nities, ordinances, quittals, hereditaments, and all and singular other things whatsoever in the said letters patent or charters aforerecited, or any of them contained, or mentioned to have been given or granted, with all and singular the appurtenances (except such as in the same charter, or letters patent, or in these presents are excepted) as fully, plainly, freely and wholly, to all intents and purposes, as if they had been expressed, named, mentioned, declared and manifested severally, and namely, and word for word in these presents: to hold all and singular the premises by these presents mentioned to be granted or confirmed, with all appurtenances of us, our heirs and successors, by such, the same, or the like services, fees, fee-farm, rent, sums of money and demands whatsoever, by which or by what, and as all and singular the same premises were formerly held of us, or our predecessors, or were intended to be held by the same letters patent, charters or otherwise."¹

The charter of Charles II., 1668, is still another general charter of *inspeximus* and is usually called the *Inspeximus* Charter. It begins by reciting the first charter of Charles I. by way of *inspeximus* and copies the whole of that charter with all the charters quoted and recited in it, verbatim, including the so-called second charter of William the Conqueror, but which is really, as we have seen, only a charter to a subject named Deorman. After reciting the last charter of Charles I., also by way of *inspeximus*, it concludes with a detailed confirmation of all these charters with all their contents, and all lands, offices, jurisdictions, privileges, liberties, franchises, customs, etc., by whatever name had or enjoyed, as fully as if each were separately, singly or nominally expressed.²

Then came the famous case of *quo warranto* against the city of London, and the statute 2 W. and M. Ch. 8, 1690, vacating the judgments therein and declaring the mayor, commonalty and citizens of the city of London to be and continue forever a body corporate and politic *in re facto et nomine*.³

¹ Hist. Charters of London, Birch, 163-165.

² *Ibid.* 221.

³ *Ibid.* 226.

It is impossible to answer the question when London was incorporated, as this necessarily brief examination of its charters shows. It is even difficult, and probably impossible, to answer the question how many charters the city of London has. In *Munimenta Gildhallæ Londonensis*, pages 128 to 171, may be found a brief synopsis of thirty-eight charters down to the reign of Henry V (1413). Unfortunately this synopsis stops there, the editor stating in a foot note that abstracts of several others are to be found in the original down to the reign of Henry VII (1485), "which being already in print, it has been deemed advisable to omit." Luffman, in his charters of London, gives us forty-seven to the reign of George II (1727), but his list is imperfect, for the thirty-eighth charter of the *Liber Albus*, cited above, is of Henry V, while Luffman's thirty-eighth charter is of Henry VIII, showing that many charters were omitted. The best summary of these charters is given in the introduction to the *Historical Charters and Constitutional Documents of the City of London*, by Walter de Gray Birch. The necessity for the publication in the original and in a correct English translation of all the charters of London is apparent, especially in view of the mistranslation for centuries of a charter three lines long. The indifference thus shown concerning the original sources of historical information in England is a subject of constant wonder. The older the charter, the more important is it to know the very words used, both in the original and in English. Yet the older the charter, the harder it is to get these exact facts.

My subject is not only of academic interest, it is also one of the most important practical questions of the day, one that goes to the very root of our political being. In the light of this examination of the facts of history, ignored by writers on municipal incorporation during the last century, it is plain we must revise our conceptions of the elementary principles involved. When we find how municipal incorporation arose in England, how our forefathers fell into it naturally, upon reaching these shores, without authority other than their own self-

asserted authority, how legislatures acknowledged that these self-incorporated towns were valid corporations, we are in a position to realize how utterly erroneous is the doctrine, derived from the equally erroneous doctrine that only the King can incorporate, that towns are only the creatures of the state and are subject to its uncontrolled will, in the absence of express provisions to the contrary in the constitution. Municipal incorporation is not the exercise of a power emanating from King, Parliament or Legislature—the gift of a superior to an inferior. It was the result of the evolution of local rights and liberties as between the inhabitants of a manor and its lord. The right to local self-government thus slowly evolved and even more slowly acknowledged, including the right of the townsmen or burghers to enact their own by-laws and to enforce them in their own local court, and generally to manage their own local affairs, was and remains still a fundamental Anglo-Saxon right. It is none the less a real right because only dimly recognized or even ignored by King's judges. It is as fundamental and institutional as any other Anglo-Saxon right. Although ignored by courts, lawyers and writers, it was known to the common people and was brought to this country by the first settlers, and here, free from the encroachments of the aristocratic features of the English system of government that contributed so much to its decay in the parent country, it has, with renewed vigor, proved its superiority as the best system yet devised for the government of freemen by freemen. Like everything else in our system of government and law, it is not a creation but a growth from rudimentary beginnings. The rights of municipal corporations therefore are not subject to the uncontrolled and uncontrollable will of the legislature any more than are other fundamental Anglo-Saxon rights, and local self-government itself cannot be interfered with by the legislature even if the state constitution be silent on the subject, reserving always to the legislature power over all general legislation and power to mould the exercise of town power when requested by a town itself.

Magna Charta, section 16, speaks with no uncertain sound on this subject :

“ And the city of London shall have all its ancient liberties and its free customs, as well by land as by water. Furthermore we will and grant that all other cities, burghs and towns and ports should have all their liberties and free customs.”

Foremost among these liberties is the right to local self-government that politicians throughout the United States are assailing through control of the legislature by the machine. Too often they are helped, or not resisted, through public apathy, ignorance of the deep-seated nature of the right to local self-government through the origin and development of municipal incorporation, and the decisions of courts, guided by erroneous rules of law and precedents following implicitly conclusions arrived at without adequate study of English and American history and our legal and political development, following the mere letter of the law without inquiry into the principle at the bottom of it. I firmly believe that herein now lies the greatest source of danger to American political institutions. Either an enlightened public opinion and better knowledge by bench and bar of our rights must arouse our judiciary to save us from such legislation as has been upheld in late decisions or our constitutions must be amended so that they will state explicitly that towns, cities (or counties, etc., in some states) are the units of our system of government and have the right to govern themselves in all matters of local concern, free from the control of the legislature, except through general laws, applicable to all such units alike, or through particular laws, passed at the request and with the consent of such units, to enable them to do that which otherwise they would be powerless to accomplish.

It will be claimed that the views herein set forth contravene the law on the subject of municipal corporation that has long been accepted, or rather, taken for granted. Hear what Lord Denman said in the case of *O'Connell vs. The Queen*, 11 Cl. and Fin. 155, at 369 and 372 :

“ A case was brought before that court ” (of the Exchequer) “ upon which it was proposed to overrule, not the *dicta*, the impressions, the fancies of the learned frequenters of *Westminster Hall*, but decided cases, running through a period of near 50 years, appearing in numerous reports, and laid down by all the text writers. I believe Mr. Justice Bayley, on a particular examination of these cases, thought them clearly founded in error; they were traced to a dictum by Lord *Mansfield* in his first judicial year, which *dictum* was held by Mr. Justice Bayley to be untenable; and my noble and learned friend pronounced the unanimous judgment of this court, denying the authority of these cases and overruling them all. I speak of the case of *Hutton v. Balme* (2 Younge & J. 101; 2 Cr. & J. 19; 2 Tyw. 17; and on error, 1 Cr. & Mee. 262; 2 Tyw. 620; 3 Moo. & S. 1; 9 Bing. 471). ”

“ And I am tempted to take this opportunity of observing that a large portion of that legal opinion which has passed current for law, falls within the description of “law taken for granted.” If a statistical table of legal propositions should be drawn out, and the first column headed: “ Law by Statute,” and the second: “ Law by Decision,” a third column under the heading of “ Law taken for granted,” would comprise as much matter as both the others combined. But when, in pursuit of truth, we are obliged to investigate the grounds of the law, it is plain and has often been proved by recent experience that the mere statement and re-statement of a doctrine—the mere repetition of the *cautilena* of lawyers—cannot make it law, unless it can be traced to some competent authority, and if it be irreconcilable to some clear legal principle.”

THE EVOLUTION OF THE JUDICIAL OPINION.

BY

EMLIN MCCLAIN,

OF IOWA CITY, IOWA.

Of all the systems of laws which have been evolved in the world's history, but two have received attention as systems of jurisprudence in a broad sense; that is to say, only two of them have been developed as applicable to other peoples than those with whom the laws originated. The Roman law has been extended by adoption until, under the name of the civil law, it has become the foundation of the jurisprudence of Teutonic, Scandinavian and Slavonic races, as well as of all the Latin peoples. It has become a system suitable for the regulation of the affairs of civilized peoples anywhere, and as well adapted for introduction among the Japanese entering upon their career as one of the civilized nations as it was for the adoption of the peoples of northwestern Europe on their emergence from semi-barbarism.

It may perhaps have already been surmised that the other system referred to is the common law of England. But it is possibly questionable whether the assumption that the common law is a system of law in the same sense as the civil law, and yet distinct and independent of it, will pass unchallenged. It would be undoubtedly contended by some whose judgment is entitled to consideration that so far as the common law is jurisprudence, as distinct from a local customary law, it has borrowed all its excellence from the civil law. While perhaps it would be contended by others that it is not jurisprudence in any proper sense, but simply a collection of statutes and precedents applicable only to the people among whom it originated and by whom it has been developed and preserved. The first of these contentions seems to be plainly refuted by the facts.¹

¹ See Hammond's Notes to Blackstone's Com., Introduction, and Pollock & Maitland, *passim*.

So far as the Roman occupation of Great Britain is concerned, the resulting influence was limited to the aboriginal inhabitants, and on the withdrawal of the Roman armies fell into speedy decay, having but slightly affected the race then inhabiting the island of Great Britain, and was not in any way transmitted to the succeeding Anglo-Saxon invaders who brought with them a governmental organization and popular institutions of their own, which, at the time they came to Great Britain, had not yet been subjected to the power or civilization of the Romans. Anglo-Saxon laws and institutions, down to the time of King Alfred, certainly had not been fundamentally affected by extraneous influences. If Anglo-Saxon laws were indeed at any time so far moulded by the Romans that the common law can be said in any way substantially to embody the principles of their system, then it must have been in one of three ways: By their incorporation into the semi-barbaric codes of Alfred and his successors, or introduction through the Norman invasion, or as a result of the extension into England of the revival of the study and knowledge of the civil law by which the learned men of England were brought into touch with the jurisprudence of the continent. As to these three possible methods, it may be said briefly that the semi-barbaric codes of Europe and of England, while showing some traces of a learned gloss, were substantially and in spirit embodiments of customary law. Their plan may have been suggested by the Roman codes as then existing and known, but their substance was not. As to the Norman invasion, it is sufficient to say that the laws of England were not changed thereby, and that feudalism was not distinctively Roman, nor did it signify Roman influence. And as to the revival of learning, it was felt too late in England to have fundamentally affected the actual law as administered. It is true that the compilations which were made by Glanvill and Bracton and Britton suggested the jurisprudence of the civilians. But the significant thing is that subsequent writers go for their law, not to the civilian learning embodied in Bracton,

but to the Year Books and other collections of reported cases and compilations of feudal customs, following, it is true, to some extent the general plan and method of the civilians, but stating rules of law clearly not derived from them. Undoubtedly many rules were borrowed from the civil law, particularly in the development of equity, but in working out these principles they were subjected to the restraints of precedent, and only in accordance with this method were they incorporated. Without an attempt at further elaboration it may, I think, be safely taken for granted that the common law is a development of Teutonic institutions by the Anglo-Saxon race without fundamental dependence on the institutions of the Romans or of any people who had been fundamentally influenced from Rome. It is indeed a curious fact that while the Latin and the Germanic peoples are in many ways strongly contrasted, the Latin system of law and the Latin civilization have been largely adopted by Teutonic peoples. But the Anglo-Saxon branch of the Teutons has, by the peculiar circumstances of its historical development, been kept free from predominance of either the laws or governmental institutions of the Latin races.

The common law then, if it is entitled to be considered a system of general jurisprudence, may be regarded as fundamentally independent of the civil law. But is it a system of jurisprudence, or is it simply an aggregation of local laws? It has not, perhaps, been voluntarily accepted by alien races, and, it may be, it is not so well adapted for transplantation as a theoretical system as is the civil law. But it has followed English speaking people around the globe, and has been retained by them regardless of change of government and institutions. It has been applied by them to new social conditions and has been found to be adequate for regulating the relations of freemen everywhere. And he would be a rash man who would contend that the common law, as it has thus been developed, transplanted and extended, is not entitled to be called a system of jurisprudence.

Now the marked distinction, it seems to me, between the civil law and the common law, speaking of the two as comparable systems, is the fundamental difference as to the relations recognized between those subject to the law and the authorities administering the law. According to the civilian idea the law is promulgated by the sovereign power, while, according to the common law, it is a system of rules in accordance with which the rights and relations of freemen to each other are determined. I know very well that Austin and his school have adopted, apparently without any careful consideration, the Roman definitions of law and sovereignty, but that these definitions do not represent the controlling facts as to the common law is easily seen when we discover that, in the United States, sovereignty has become a myth or a fiction, and that the law works just as well without as with the assumption of Austin. If we should choose to resort to generalizations we might say that the law itself is sovereign, without regard to its source or authority, but that statement would be a mere barren and empty fiction. The fact is that the relations of subjects, or, as we now seem to prefer to say, of citizens, to each other are determined by rules recognized by the courts and that these rules are to some extent promulgated by some kind of legislative authority, such legislative authority itself, however, being circumscribed, but to a much larger extent by recognized principles of right and justice based upon custom and precedent. It is, perhaps, not permitted to claim for the common law, as distinct from the civil law, a customary origin, for all law is largely developed from custom. But I think we may safely claim that the common law is more immediately the product of development from the customs of the people than is the civil law.

It is an interesting feature of the common law that it has been administered from very early times in tribunals having judicial rather than administrative powers. There was, of course, a time when theoretically the king exercised judicial

¹ See Hammond's Note (10) to Blackstone's Com., Introduction.

functions, and practically administered the laws through those directly representing him and constituting part of his general court. But the representatives of the king for this purpose were, even in very early times in the history of Anglo-Norman institutions, appointed on account of their knowledge of the law, while officers exercising similar powers as the sovereign's representatives on the Continent were, as I understand it, not necessarily members of the legal profession. Indeed, I fancy that a most marked distinction between the civil and the common law is to be found in the greater importance of the lawyer and the judge under the common law. The study of the history of England develops the existence of a judicial system without precedent in the continuity of its form and the persistence of its ideas among all the human institutions of which we have any knowledge. The records of that system, still extant, show a practically unbroken history from the reign of Richard I, in the twelfth century, to the present time, embodying in a vital way the life, the civilization and the progress of a people, during that time grown from semi-barbarism to the highest human development. The history thus preserved is not that of kings, and princes, and nobles, but of the common man, of "one Adam" and his wife, Joan, Henry Bodiran and William Sedman, and Dame Maud Devereux, and John and Alice and Elizabeth; and the incidents about them which have been preserved like flies in amber are those of inheritance or transfer of land, and the assertion of right to possession of property, and, more significant perhaps than either, the constant vindication of the rights of the person. Already, at the very beginning of our judicial history, as Sir Francis Palgrave remarks in his introduction to the *Rolls and Records of the Court in the time of Richard I*, "Our jurisprudence has assumed all those characteristics, through and by which, greatly as they have been altered from age to age, it is distinguishable at the present day. Beginning with Glanvill;—continuing our inquiries upon the *Rolls*, existing from the reign of John in regular succession; comparing these

records with the commentary furnished by the Year Books;—and lastly opening the Volumes of the Reporters, properly so-called, we could—if human life were adequate to such a task—exhibit what the world cannot elsewhere show, the judicial system of a great and powerful nation, running parallel in development with the social advancement of the people whom that system ruled.” With such a system already well established as a part of the life of the people, and not brought in, it must be remembered, by Norman conquerors, but inherited with Anglo-Saxon blood through many generations of men who had been the actual inhabitants and occupiers of the country, it is wholly incredible that an alien system should have attained anything more than a superficial recognition. Grant that Henry de Bracton borrowed the introductory chapters of “De Legibus” from Azo, the civilian whose treatise was then current as the best practical embodiment of the Roman law as it was studied in England, and that to their credit be it said the justices of the king were many of them learned in the civil law, yet the law which they administered was the common law of England, and the rights of Adam and John and Mary were not determined by what might have been found in Justinian’s institutes with reference to the definition of *jus* and *lex*, but by ascertaining what it was customary for English judges to decide in like cases. The reading of Bracton himself beyond the introductory pages proves conclusively the fact. After the author has written the first few chapters by way of learned exposition of the nature of law, largely borrowed, as already suggested, from Azo, he proceeds in elaborate detail to describe English procedure and English property rights, and Justinian disappears entirely from view. He refers to decisions of the courts, although he is compelled to do so from current or personal knowledge, as reported decisions were as yet apparently unknown, and instead of announcing general principals, borrowed from code, or pandects, or digests, he tells us what was decided in an assize of mort d’ ancestor “in the iter of Martin de Pateshull in the

county of Lincoln in the tenth year of King Henry" as to whether Agnes was the daughter of Eve of Benyngworth.¹ And again he announces in another connection the rule that under circumstances described, the writ of novel disseisin ought to fail, as is proved in the iter of William de Raleigh in the county of Warwick in an assize of that character with reference to whether Robert were the son of William.² His citations refer to cases in detail as authorities for his statements of the English law, and not to civilian generalizations. It is a fact that Bracton embodied in his treatise the English law as it was then administered, and it was this which made him the first legal authority of his period in importance and influence, and not the fact that he was learned in the Roman law. His successors were the digesters and abridgment makers—Fitzherbert, and Brooke, and Rolle, and Viner—and these men concerned themselves with the decisions of the English judges and prepared the way for Coke and Hale and Blackstone, the great expounders of the distinctively English system of law.

If it be conceded, then, that there are in the civilized world two distinct and comparable systems of law, somewhat different in their sources and in their methods of developement, as well as in the nature of the authority on which they are assumed to rest, then we may notice as significant the manifest distinction between them in regard to the effect given to precedent. It is a very interesting fact that the decisions of courts under the civil law are regarded as of very slight consequence in determining what are the general rules and principles to be recognized in the administration of justice, while under the common law, precedents are of controlling importance. Comparing the working library of a civilian with the corresponding working library of a common law lawyer, it is worth noticing that the books to which the one resorts are made up of treatises on the general principles of law and statutes enacted by the sovereign

¹ See IV Bracton, 261 (Twiss' Ed.)

² III id., 211.

authority, while the library of the other is composed largely of announcements of law in particular cases, made by the judges who decided those cases, and to a limited extent only of statutory enactments, and that the treatises consulted by the latter purport to contain, not discussions of the general principles of abstract law and right, but compilations of rules and precedents which the courts have announced and recognized. This distinction, I take it, is fundamental, and for a rational comprehension of it we are driven to a consideration of the nature and effect in the common law system of the announced opinions of the courts. It occurs to me that we may get a better conception of the nature of the common law by considering rather carefully the judicial opinion, that which has so little weight with the civilians, and so great weight with the common law courts, and by noticing its origin and its development, and it is for this reason that I am attempting to call your attention to its evolution.

It is not the preservation of the records of the formal judicial proceedings which is characteristic of the common law, for such records were preserved on the continent during a period contemporaneous with our own early judicial history, without the development there of any notion of the doctrine of precedent. But it seems, from the treatises of Bracton and others who first attempted to put into writing the law as it was administered in England, that the king's judges, in conducting the litigation of their courts, even before the introduction of written pleadings, and while, therefore, the contentions of the parties were presented orally, were in the habit of making rulings on questions arising during the trial, and assigning their reason therefor, and it is plain that as early as during the reign of Henry III, that is, in the thirteenth century, memoranda of these rulings on interesting questions, distinct from the formal court records of the cases, were preserved for consultation and reference in connection with other like cases. Certainly as early as the thirtieth year of Edward I, that is, at the very beginning of the fourteenth century, these reports

were kept by officers specially appointed for the purpose, and such reports, showing the contentions of counsel and the conclusions of the court with reference to the questions thus presented, were for two centuries embodied in the Year Books, which contain voluminous records of this kind, with the express object of making known to those interested the law administered in the deciding of cases. The Year Books, as distinct from the Court Rolls, show what was decided, not as adjudications important between the parties, but as precedents to be considered in other cases. Often, especially in the earlier volumes, there is a mere note that in a case which may be found formally entered in the Court Rolls some particular question was considered. More often, however, the facts of the case are briefly stated in connection with the names of the parties, and the contentions of counsel and rulings of the court are given, and occasionally, at greater length, the judge expands his brief statement of points decided into a discussion of the law of a particular question with reference to other cases on the same subject. When the official reporting of the Year Books had terminated, the judges themselves, or counsel, preserved for their own use memoranda of like character, and thus grew up the system of law reporting. The whole conception was that which is still familiar to us of a judge trying a case in the light of all the information as to the previous law attainable and ruling on new questions by applying to them principles already recognized, his rulings being preserved for like use by other judges. This was the development of the doctrine of precedent. This was the recognition of law made by the judges. This was and continues to be the characteristic of the common law as distinct from the civil law. This was and is the very spirit of the common law system, as to which Bentham and his school, starting with the assumption of Austin that all law is in some way the announcement of a sovereign will, inveighed and cavilled, but against which they have railed in vain. This was the spirit of the common law which Blackstone embodied in his Commentaries, and which,

brought to America by the English colonists, was preserved by them as their richest inheritance, and under which they asserted personal rights which they claimed to be inviolable even as against the authority of the king. This was the system with reference to which the encomiums of the expounders of the common law were spoken. They would have us believe that in the very nature of things it must be so, that the reasons of the judges in announcing their decisions become the guide and law for other judges in subsequent cases. But we realize well enough that the reason for the origin and development of the doctrine of precedent was not any *a priori* conception, but one of practical convenience, leading, unconsciously, to the perpetuation of a system which, because it was found to be in existence, and perhaps also because it was found to be a good system, has been preserved to the present time.

Lord Coke, the great champion and expounder of the common law, exalted this characteristic in his pompous language: "Reason is the life of the law. Nay, the common law itself is nothing but learned reason, or the perfection of reason, gotten by much study and observation; which, by many succession of ages, hath been fined and refined by an infinite number of grave and learned men; and by long reason grown to such a perfection for the government of this realm, as the old rule may be justly verified of it; No man of his own private reason ought to be wiser than the law."¹

This sort of thing was all very well in its time, but looking back over the history of our law and comparing it with the civil law as a rival, we do not find it so easy a matter to vindicate it as the system which is preeminently the embodiment of human reason. Its course has been different from that of the civil law probably because of the peculiar feature, not easy to explain, involving the submission of questions of fact to a jury, from which it resulted that the judge must confine himself to the determination of the question to be submitted, rather than to the final result to be reached on the evidence. Professor

¹ As quoted in Croke's *Eliz.*, Preface, Fifth Ed., by Leach.

Thayer has pointed out how this characteristic difference gave rise to the peculiar development under the common law of a system of rules of evidence.¹ And it may very well be that it was likewise the occasion of an unanticipated development of the doctrine of precedent, for we may be sure that when the custom of giving reasons for rulings was first indulged in there was no conscious purpose of founding a system of judicial legislation. Nor probably was there any definite purpose of announcing precedents which should be binding in subsequent cases. The natural explanation of the whole process seems to be that under the conditions surrounding the trial of cases in the early courts of the king it was natural and reasonable for the judge to state the rule or principle by which he was guided, whether that of a statute or the customary law as he understood it, and equally natural for other judges, in an effort to ascertain what was the customary law, to give weight to the decisions of previous judges in similar cases.

But the outcome was judicial legislation,² that is, the laying down in one case of a rule on the more or less fictitious assumption that it was already law, and in subsequent cases referring to the decision in that case as having established the law. It is not strange that the exercise of such a function on the part of the courts should have evoked criticism from those attempting to make an analysis and philosophical interpretation of jurisprudence. Having satisfactorily limited the function of courts to the application of a body of rules or commands promulgated by the sovereign power, it was well thought to be altogether anomalous that these courts should be making and following rules which no sovereign power had ever conceived of, and which the judges themselves had to confess were intangible and unascertainable until they had declared what they were. Nevertheless, the process of judicial legislation has been an inevitable result of the dual function which the judges assumed, as we have seen, from the earliest period of not only

¹ Preliminary Treatise on Evidence.

² See article by E. R. Thayer, in 5 Harv. L. Rev., 172.

announcing the judgment in a case, but also the reasons which led to such judgment. For while the judgment could only have reference to a state of law and facts existing at the time of or prior to its rendition, it is plain that the reasons announced could be of no importance or significance save as furnishing prospectively some guidance in the adjudication of other cases. And yet, complex and fictitious as the process of judicial legislation may seem to be, when subjected to philosophical analysis, it is a perfectly rational, natural and simple means of reaching that which must be admitted to be philosophically the desirable end to be attained in the decision of cases, to-wit, not merely a conclusion which to the judge himself who is deciding the case is just, but that conclusion which by the consensus of those qualified to administer a system of law would seem just. For, as has often been pointed out, the qualities of certainty and ascertainability are as important in judicial proceedings for a determination of controversies between parties as is the abstract justice of the conclusion reached. Indeed, it is admitted that there is no element more important in reaching a conclusion as to abstract justice, conceding that it is to be determined by reason and not by impulse or feeling, than that it is ascertainable and such as might reasonably have been anticipated.

The judicial opinion then, in the common law system, is that part of the finding or decision of a court which assigns, either expressly or impliedly, the reason for the result with a view not only of vindicating that result as just, but also with the purpose, which may be largely unconscious and unanticipated as to its consequences, of furnishing a guide for future decisions in order that they also may be reasonable and certain. The system of judicial legislation involved in the discharge of this function has been from time to time vigorously and even violently assailed, the objections to it falling, roughly speaking, under three different categories.

The popular objection is that in the attempt to administer law on the basis of precedent, the courts lose sight of the ad-

ministration of justice. This criticism cannot be effectually answered for the reason that it is usually made by those who are unable to comprehend the nature of the criticism which they make and the conclusiveness of the answer which must be given. It would be a great shock to those who make the complaint if they were told that courts are not established for the purpose of administering justice, and yet that is the real answer, for the conception of justice which is assumed in the criticism is that of a result which shall satisfy the moral feeling of the persons who assume to criticise the conclusion reached, and as the elements in a controversy which appeal to the moral feelings are extremely diverse, intangible and uncertain, it is evident that if the courts should undertake to announce results with this object in view they would fall into hopeless confusion, and the rights of parties would be determined by whim and caprice, and not by any system of established rules and principles. All that can be said in answer to this form of criticism is that it is probable that in the long run the judgments reached by the courts following and establishing precedents as they go, are better from the point of view of public policy, and quite as satisfactory from the standpoint of abstract justice, as those which could be secured in any other way.

The philosophical objection to judicial legislation comes from those who seek to formulate a theory of the law, and perhaps we need feel no great concern about it. No system of law was ever built upon *a priori* theories, and it is enough to say that the philosopher must content himself with explaining and arranging what is, rather than by attempting to dictate as to what ought to be.

The third and most serious line of assault upon judicial legislation is the practical one that the system has become so unwieldy as to necessitate radical changes in our methods of determining what is and is to be the law governing the rights of litigants. It is estimated that when Blackstone wrote his commentaries, the whole volume of adjudicated cases which

must be consulted in gaining the information as to the law which precedents could furnish was embraced in about one hundred and fifty books. Those books contained the body of the common law as it was recognized in the states of the Union immediately after the establishment of organic independence. The practical question, I take it, is whether this system of announcing law in the light of precedent, which has been reasonably satisfactory to judges and jurists, and which no doubt would still be reasonably feasible were there no concern save as to the law of England, is still practicable for us in the United States with its distinct and independent jurisdictions, in each of which cases are being decided with reference to principles assumed to be common to all the jurisdictions, and therefore entitled to be considered as having greater or less weight as precedents, and yet by courts having no connection with or authority over each other; that is, to put the problem roughly, has not the doctrine of precedent reached practical limits for us, and is it not about to break down with its own weight? Our attention is called to the fact that there are now six or seven thousand volumes containing cases which it may be desirable to consult and refer to as precedents, and that each year adds perhaps two or three hundred volumes to this number. To this line of objection there is no answer except one, which is entitled to equal practical consideration with that of the objection itself, to-wit, what better system is proposed? Mere theoretical and speculative propositions of reform cannot be entertained. Rights are based upon the system of law under which the people claiming those rights are living, and it will not do arbitrarily and ruthlessly to break up the foundation of that law. However reasonable, abstractly considered, might be the proposition to substitute the theory and practice of the civil law in place of that of the common law, it is plain that it would be just as impracticable now as it was when the barons of England, in answer to the proposition to adopt the canonical rule as to legitimatizing bastards by subsequent marriage of their parents, responded

emphatically, "We will not change the laws of England."¹ The fact is that the whole tendency of our jurisprudence has been toward an even unreasonable adherence to its law of precedent, and an arbitrary reform is as impracticable now as it ever has been. Perhaps we may reach a better conception of what is involved in the doctrine of precedent, and introduce a corrective tendency, but that is the best we can hope to do. Of this I shall have a word to say in conclusion.

But it is proper first to give attention to the reforms which have been proposed and undertaken since the abandonment of the effort which perhaps was really not deliberate nor intentional, to substitute the general theory of the civil law for the customary common law. However diverse the influences which have operated toward a radical reform in our law, they have been brought together in one common impulse toward codification. Indeed, the striving after the theoretical simplicity and philosophical nature of the civil law has tended in the same direction, for the civil law is largely characterized by the fact that it is embodied in codes. It is plain, nevertheless, that codification is not the essential characteristic of the difference between the two systems. Even when the common law in any of its branches, or in any of the jurisdictions where it has been in force, has been reduced more or less completely to a code, the doctrine of precedent has still persisted to distinguish broadly the result from any near approach to a similarity with the civil law. While codification of any branch of law makes unnecessary constant reference to the previous precedents as showing what were the main rules of that branch before codification, yet it is in the very nature of things impossible to make a code so complete as to subject matter, and so free from doubt in the meaning intended to be expressed, that it is unnecessary to look into the law as it existed just prior to the adoption of the code and its history up to that time in order to determine what was intended. And immediately upon the adoption of the code it becomes necessary to

¹ See Pollock & Maitland, s. n. "Nolumus," in Index.

commence a course of interpretation by means of judicial decisions for the purpose of applying its language to conditions not fully comprehended or anticipated in its construction, so that the code itself, even were it a perfect embodiment of the law as existing, or as intended, at the time of its enactment, must furnish but the basis for a new series of precedents. It is the spirit of the law and the nature of the functions of the courts administering it which makes the fundamental difference between the civil and the common law systems, and not the outward form in which those systems may be embodied. Those, therefore, who still entertain the wish that in some way the common law may be moulded into a system similar to that of the civil law, in the belief that such a system would be better, need not look for a realization of their hopes in any movement towards codification, as understood by us.

Those who want the common law reformed because of its slavish adherence to precedent, with a view of bringing about greater responsiveness to claims made in the name of abstract or moral justice, usually favor codification, but without any intelligent conception of the process. If they had such intelligent conception they would understand at once that a written code is more arbitrary and inelastic than are the rules of law built up by judicial legislation, for the common law, as demonstrated by the experience of eight centuries, is susceptible to influence and capable of modification, development and expansion, and I think the advocates of the civil law ought freely to admit that no such elasticity has been possible with reference to the codes embodying that system. It is true that the civil law has grown and has been adapted to new conditions, but only by a wrench and a struggle in each instance, indicating long periods of lack of adjustment between the system itself and the social needs of the people living under it.

Those who object to the judicial legislation of the common law because it is philosophically abnormal and illogical, have, of course, favored codification. Indeed, they were the origi-

nal advocates of reform in this method, and their followers continue to claim all the credit of the codification movement, although as a matter of fact the philosophical codifiers have accomplished nothing. Bentham never proposed any code which could have been made to work as a basis for the actual administration of justice, without the assistance of judicial legislation, and none of his followers have even the apparent skill in the drafting of codes which he himself exhibited.

What success has been achieved in codification, and it may well be admitted that it has been considerable, is due to efforts of those who sought, first, the modification of the common law in some respects in which, as it seemed to them, judicial legislation had not adapted itself with sufficient elasticity to special and rather radical changes in the governmental or social system, and, second, the substitution of short and methodical statements of general rules for the principles, sometimes uncertain and often not fully elaborated, found in the judicial decisions on any particular question. The effort to accommodate the law to great and sudden changes in the condition under which it is administered has been reasonably successful. Codes of procedure and criminal codes have resulted in very great improvement in the administration of the law. But changes in condition, such as made these reforms necessary, will occur at rare intervals, and the necessity for and success of codification in such instances does not prove that it is in general feasible or expedient. Again, codification has been found practicable as to some particular branches of the law, such as the law of negotiable instruments which is not in itself intricate and is particularly stable in its nature, and moreover may be made intelligible to, as it must necessarily be understood by, those who act with reference to it. But the effort to codify the whole common law for a particular jurisdiction which has been made in several states of the Union, has not been attended with any marked benefit or success. It is doubtful whether the law is any more easily or certainly administered in Georgia or California by reason of the general codification attempted in those

states. There is as much litigation, as much dependence on precedent, as much uncertainty in the application of the law, as in those states where the common law is still substantially enforced in its uncoded form. The experiment has been fully tried, and under the most favorable circumstances possible, in California where the codes were adopted before there was any great body of decisions by the courts of the state, and yet the advantages have not been so apparent that the experiment affords any convincing argument in favor of general codification.

The judicial opinion remains, notwithstanding these efforts at reform, as the common and convenient embodiment of the principles of the law, through which they are announced and to which reference is made for the purpose of ascertaining what they are. If any improvement is to be secured—and we are all too optimistic to believe that improvement is unnecessary or impossible—it must be sought through better conceptions on the part of the judges as to the best method of exercising their functions of ascertaining and declaring the law, and it is to some possible modification and improvement of these conceptions that I beg to call your attention for a moment before I close. But first let me say that there has already been great improvement in the methods of judicial legislation, so called, and a demonstration of an inherent capacity in our common law to largely meet the difficulties which changing conditions have brought about. The situation is by no means as bad as the critics of the system would have us believe. The multiplicity of precedents has led to a greater freedom in adopting rules which shall be suitable to the attainment in general of substantially satisfactory results. No one case or series of cases has the arbitrary and inherent authority which was earlier in our judicial history accorded to the rulings of the courts. There is a much greater liberality exercised in modifying, by way of restriction or expansion, rules which have once been announced. Moreover, the common law has been found to possess the capacity which all living organisms have, of getting rid of that which has become dead or useless. We still talk with a cer-

tain veneration of the decisions in the Year Books and in the early English reports, but do we practically ever refer to them except as furnishing an explanation of that which is now recognized as the body of our law? I do not sympathise in the least with those who lament this casting off of the old and dead material. The tree is built up around a heart of wood that is practically dead and through which the sap has ceased to flow. This core gives shape and strength to the structure, but is practically no part of the living organism. Likewise the tree, in the course of its history, has shed innumerable twigs and branches, and has gained in body and strength by doing so. It has, it is true, more branches and more growing twigs than when it was smaller, but they all have their organic relation to the structure, and each performs its appropriate function. When that function ceases to be necessary the useless portions of the organism are gradually eliminated. Not only has this process resulted in the practical desuetude of the older portions of the English case law, but it is also operating already in the older states of the Union in the elimination from practical consideration of a considerable portion of the volume of their earlier cases. The only practical difficulty is in achieving some method of avoiding the consideration of useless and superseded cases in the search for controlling authorities. But the lawyer who works backward from the recent to the more remote decisions has no great difficulty in reaching a limit to his necessary investigations. The digests are more voluminous, yes, unfortunately they are immensely voluminous. But a reform in the digests is not inherently essential to the successful administration of the law. And even the newest encyclopedia or general digest is not so much larger than the digests or abridgments of Bacon or Viner as to indicate any immediate extinction of the common law by reason of excessive and uncontrollable corpulence. Some method may be devised of compiling digests, encyclopedias and text-books which shall recognize the practical uselessness of great numbers of the

older cases, and make available to those who are concerned with the present practical administration of the law that body of cases which is still the vehicle through which the vital currents are flowing.

But I think it must be granted that we have too many expressions of judicial views which we are expected to consult in determining what the law is. It is true, we no longer give much consideration to the opinions of *nisi prius* judges, although even in this respect there might be much improvement—an improvement, by the way, which has been greatly hampered and checked by the enterprise of publishers in putting into print everything which is in sight in the way of a judicial expression of view, regardless of its nature or value. But the improvement might be pressed further, to the exclusion of a large portion of the decisions of intermediate appellate courts in classes of cases as to which they have not final and conclusive jurisdiction. But a still greater betterment is practicable through the intelligent co-operation of the judges of those courts whose jurisdiction is such that their decisions ought to be preserved and considered.

And here let us stop a moment to see whether it is not possible, by a revised conception of the functions of judicial opinions to bring about a reduction in their number and aggregate volume. A judicial opinion is not essential in the decision of a case with reference to the rights of the parties themselves. An official judgment, which succinctly states the relief awarded, is all that is necessary in the case so far as that controversy is concerned, and no one now imagines for a moment that such judgments need be promulgated as matters of public interest. When they are entered on the records of the courts, all has been done that is necessary. Moreover, while it is generally assumed to be a satisfaction to the parties and their attorneys, to which they are fairly entitled, to know the reasons on which the result reached is based, there is no public necessity for the announcement of these reasons. It would, no doubt, also be a satisfaction to the parties concerned to know,

where the decision of a judge is based on the evidence as in an equity case, just what witnesses he has believed and what witnesses he has disbelieved, and just how he has reconciled the conflicting testimony. Yet nobody would claim that in the case itself it is at all essential to the proper administration of justice that such express findings be made. The desire of a judge deciding a case to vindicate the result which he reaches so that he shall not be chargeable with incompetence or partiality, is commendable. But where it is not customary to make any such explanation, the administration of justice is quite as effectual without as with it. Moreover, we have not yet reached, and probably in the near future cannot expect to reach, the general perfection of impartial judgment by which the unsuccessful litigant and his lawyer can be made to see the absolute justness and correctness of an adverse decision. Let us then abandon in appellate courts, as we have already abandoned in trial courts, the effort to satisfy the parties immediately concerned in the case that justice has been done, and that all the ingeniously devised points of counsel have been duly and fairly considered, and turn our attention more definitely to the discharge of the proper function of a court in giving expression to the reasons on which its decision is founded. That function is discharged by preserving in permanent form the conclusions of the court on the controlling point or points in the case, which on the one hand involve a somewhat new or instructive application of legal principles to a controversy which is capable of decision by the announcement of something in the nature of a rule or principle. If, when the ultimate facts are determined by the court, it appears that there is no reasonable doubt as to the principles of law applicable to the controversy and indicating its solution, then reiteration of the principles which are applied is useless. Undoubtedly it is true that it is easier in writing an opinion to select the facts of the case with reference to which previous decisions have established the law, and then cite the unquestioned authorities on which the same conclusion is

reached, than it is to individualize the case from others and discuss the possible new propositions or applications of legal principles to it, and yet it is only opinions in which some new question or new phase of an old question arises which are of any value, and it is only those cases which can be individualized which are worth discussing in an opinion which is to be preserved as a precedent. On the other hand, if the facts involved are merely evidential facts, and the only thing which the court can say about them in the end is that they bring the case within an already established rule, then plainly an opinion is useless. The rules of law are analogous in many ways to rules of nature developed by scientific research. The scientist investigates a great mass of data. Some of the facts which he finds reported he believes to be untrue or inaccurate. Some are so plainly in accordance with laws of nature which have become self-evident that they are of no interest to him. Some, however, challenge his attention by reason of their unexpected and heretofore unexplained characteristics. He compares, reasons, seeks explanation in one known law and then in another, and finally discovers some hypothesis involving either a well-known rule under new conditions, or a new rule before unrecognized, and announces his law. It is only so far as a court can pursue an analogous process and reach an analogous result that its conclusions are valuable. The mere data of the scientist who makes an investigation may be worth preserving, but they become of general interest only when they lead to a new application of an old principle or the discovery of a new one.

The question whether the expressed opinion of a court is worth preserving was at one time significant in determining whether or not it should be reported. Plowden, in the preface to his Reports, assigns as one of the reasons for hesitation in printing his gathered material that his reports were made in a summary way by "collecting together the substance of all that was said by the judges themselves without reciting their arguments verbatim," and by purposely omitting "much that

was said both at the bar and the bench, for (he says) I thought that there were few arguments so pure as not to have some refuse in them, and, therefore, I thought it best to extract the pure only, and to leave the refuse, then and yet holding that to be the best method of reporting. But this (he admits) is a task not easily accomplished, for he who would reject a great part of what was spoken as vain and superfluous, and relate only that which was pure and material, ought to have not only great understanding and memory, but especially an excellent and distinguishing judgment." "And this excellency of judgment (he continues) is to be met with in the greatest perfection in those who are endued with the greatest degree of reason, for it is said that *ratio est radius divini luminis*, the greater degree of which a man has, the more bright is his genius." Lord Campbell, in his "Lives of the Chancellors," credits himself with having kept a drawer marked "Bad Law," into which he threw all the cases which seemed to him improperly ruled, and flattered himself that this practice accounted for the high repute of the opinions of Lord Ellenborough, of which he was the reporter. John Mews, who has established an excellent reputation as reporter and digester of English opinions, says that "A 'reportable case' is one that will be useful to the practitioner, one that construes a somewhat ambiguous Act of Parliament of general interest, that lays down some fresh legal principle or applies a well-known principle of law to entirely different circumstances, that doubts, or, as it is frequently termed by the more polite reporters, distinguishes a previous reported case; cases in short that add something to our legal knowledge."¹

But the development and perfection of our case law no longer depends on the skill or judgment of the reporter. Everything which is written is now put in print, and the judge

¹ For these pertinent quotations with reference to the art of reporting, and some valuable suggestions as to the weight of opinions, with other illustrative matter of interest, I am indebted to Professor Wambaugh's book on "The Study of Cases."

who writes must for himself exercise the discrimination once required of the good reporter, and it is for him to prevent the preservation of irrelevant and superfluous matter by the simple expedient of not writing it.

One other suggestion may, perhaps, be ventured, and that is that opinions on points which are entitled to consideration with a view to the preservation of the result reached are more satisfactory and useful if the reasons given are stated in few words. When the correct reason has at last been found it is not necessary to elaborate it by extensive argument nor to support it by multitudinous quotations and citation of authorities. It is only necessary to go so far as to show the relation determined between the significant facts of the case and the well-known principles which are applied to them. The case will be individualized by those principles and facts and will be made use of with reference to them regardless of elaboration. Lawyers and judges will alike bear me out in saying that the labored text-book opinion in which a whole branch of the law is expounded, regardless of its application to the facts of the case in hand, is confusing and often absolutely misleading, and the time necessarily expended in discovering what the court has really decided in that case is a source of constant vexation. No radical reform must be rashly attempted, but a gradual approach to a more rational practice may well be sought with reasonable prospect of great improvement.

If the suggestions herein made are sound, then I think I may safely say that the bulk of reported opinions could easily be reduced to one-fourth of that which now appals the lawyer and the judge as he sees the new volumes of reports carted into his library each year. To summarize, the reduction would be brought about by writing a memorandum only in one-half the cases and putting it in such form that the case could not possibly be cited in support of any proposition whatever. Then in cases where opinions should be written the length of the opinion could be greatly reduced by considering only the

points of some practical importance, and as to which an opinion is worth while, and, finally, the discussions of the points which are worth while could be made much shorter by the statement only of ultimate facts, instead of elaborating the reasons and facts which the judge considers and rejects in reaching those which he finds satisfactory and for which he is willing to vouch.

There is no indication that the common law system of determining and administering justice can be, or ought to be, radically changed. But it lies with the legal profession, composed of lawyers and judges, to improve that system in order that it may approach more nearly to what its old champions have so often declared it to be—the perfection of human reason.

REPORT
OF THE
COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

To the American Bar Association :

The matters referred to this committee relate to
Fellow Servants.
Slipshod Legislation.
Anti-trust Legislation.
Revision of United States Statutes.

FELLOW SERVANTS.

At the session of 1896 a resolution on this subject was introduced and referred, for the reason then given, that the committee had nothing to do and wanted business. While this reason may have applied to the committee of 1896-1897, of which Mr. President and Messrs. Howe, Dickinson, Hunt and Storey were members, all applicability to the present committee is hereby disclaimed, and we, for ourselves, and our successors, pray to be hence discharged from any further consideration of the subject.

SLIPSHOD LEGISLATION.

This subject was reported upon in 1886, and in 1896 and 1897 resolutions were adopted referring the same matter again to this committee.

The evils of slipshod legislation are apparent, but the remedy therefor is by no means clear. It is not to be expected that every enactment by Congress, or by state legislatures, will be constitutional, wise and practicable; perfect in orthography, grammar, rhetoric and punctuation, but we suggest that the observance of the following rules will approximately prevent this class of legislation :

RULES.

1. That no law shall refer to more than one subject-matter or contain matter different from what is expressed in the title thereof.

2. That no law shall be amended by mere reference to its title, but the amending or repealing Act shall distinctly describe the Act to be amended or repealed as well as the alteration to be made.

3. That each bill shall be read on three separate days in each house.

4. That no bill shall become a law unless it shall receive a majority of the votes of all the members elected to each house.

5. That a yea and nay vote shall be taken upon the demand of one-fifth of the members present, and that such vote shall be entered upon the journal.

6. That the Chief Executive shall have the veto power, and that his veto shall only be overridden by a two-thirds vote of the members elected to each house.

7. That no local or special bill shall be passed unless due notice of the intention to apply for the passage of such bill shall have been first published in the locality where the person, matter or thing to be affected may be situated.

Over and beyond all arbitrary rule must there be a civic pride that will induce the upright and intelligent citizen to take an active part in the selection of fit and proper legislators. An ignorant legislator cannot know, and a corrupt one does not care. The parents of slipshod legislation are ignorance, carelessness and vice. Their offspring will be born as long as the parents are permitted to live. No higher duty rests upon the cultured, courageous and learned lawyer than for him sometimes to turn from law book and client, from court and jury, and assume, as he has a right to assume, leadership in a conflict against legislative ignorance and vice.

ANTI-TRUST LEGISLATION.

The resolution referred to the committee may be thus stated: Is it practicable to provide by law for such discriminations among trusts and combinations in business by reference to the reasonableness of the contracts on which they are founded, their effect upon the public interests, or the intent of those engaged in them, as shall put it in the power of the courts to deal more effectively with those which are mischievous than has been found possible heretofore?

This resolution assumes that heretofore the laws have not been such as to enable the courts to deal effectively with the mischief alleged to exist. The resolution further divides these trusts and combinations into two classes—mischievous and non-mischievous. With the non-mischievous class we have no concern. We are therefore to answer this question: Is it practicable for the law to deal effectively with such a mischievous organization? We will further assume that the organization is regularly incorporated for a lawful object; that for an adequate consideration it enters into a contract with another organization of like character; that this contract so entered into, in its nature and tendency, will destroy competition, and that such was the intent of the parties to the contract. This contract for the destruction of competition may be fitly called a contract for the creation of a monopoly, not, of course, that monopoly which was granted by king or parliament, but that modern monopoly which arises out of an agreement, express or implied. The mischief in the ancient and modern monopoly is the same. It is no answer to say that modern trusts or combinations have proven in many cases beneficial to the public, for our inquiry is limited, by the terms of the resolution, to those which seek to take advantage of the necessities of the public. That contracts creating such monopolies are opposed to public policy needs neither argument to demonstrate, nor authority to sustain. By Magna Charta the granting of monopolies was prohibited, and in state and federal courts it has been held that contracts, the tendency of

which is to create a monopoly, are contrary to public policy, illegal and void. Such contracts are void on principle, and, if necessary, they can be made void by statute. Such a statute could easily be framed, making the violation thereof a crime or misdemeanor, and subjecting the parties, if corporations, to fine and forfeiture, or, if individuals, to fine or imprisonment, or both, as the law-making power might determine. The duty has not devolved upon your committee to express any opinion on the wisdom or folly of such legislation, but simply to say whether or not more effective laws are practicable, and this question may be answered by the statement that any contract or agreement destroying competition, or having a tendency to destroy competition, may be made a penal offence, and the violation of such statute may be punished in such way and to such extent as the state legislatures, under their respective constitutions, may best determine.

REVISION OF UNITED STATES STATUTES.

Your committee feels that it cannot more intelligently report upon this subject than by submitting herewith the courteous letter from the Chairman of the Commission to Revise the Laws of the United States, which letter is hereto appended.

The Commission made its report on the Penal Laws, May 15, 1901, and on January 7, 1902, the report was embodied in H. R. 7949, was introduced by Mr. Warner and referred to the Committee on Revision of the Laws. The report on the revision and codification of the judicial laws of the United States was made by the Commission on November 15, 1901, was embodied in H. R. 9316, was introduced by Mr. Warner and referred to the same committee. There is no immediate danger that these bills, or either of them, will be taken, enticed or carried away from the possession of the house committee by fraud, violence, seduction or other means. It may be consoling to American lawyers to know that the new Criminal Code of Russia was fifteen years in preparation. It is said to have been reduced in size to less than one-third of

the previous code which had been adopted in 1845. This reduction is due to better classification and to the fact that upon it there was engaged talent of the very highest order. There is no good reason why the statutes of the United States should not be codified into a Civil Code, a Criminal Code and a Code of Procedure. Your committee does not mean to reflect in the slightest degree upon the industry, talent, legal ability or experience of the commissioners, but this important work should be entrusted, as we have no reason to doubt it has been, to lawyers of learning and experience. Ample means ought to be placed at their command to obtain prompt, reliable and efficient clerical aid. There should be in this work neither unnecessary delay nor indecent haste. The commissioners should be clothed with large discretionary powers and should be permitted to call to their aid the foremost talent of the country. The commissioners, in their report, say "that the accompanying revision is not submitted as a complete criminal code;" but a complete criminal code is what the country and the people, the bench and the bar demand. The commissioners should rise to a just appreciation of the dignity and importance of this great work. It is not expected that we should enter into an extended critical report of the work of the Commission, and while we are not willing to go as far as the Association of the Bar of the City of New York by saying that "The commissioners . . . have neither revised nor codified. They have merely reprinted," yet, we do most earnestly insist that there should be a comprehensive, symmetrical, consistent and philosophical penal code. Such a revision can be made, and laymen and lawyers expect it.

The Act of 1897 creating the Commission seems to be ample in its powers; if more power is required, the commissioners should ask it and Congress should grant it. We appreciate the difficulties under which the commissioners labor. The uncertainty and confusion of congressional legislation, and the number of acts which have been passed to meet special cases, make the work of the commissioners peculiarly delicate, but no

body of men ever had better opportunity for greater work, and the bar should give them a helpful and earnest support.

The true glory of a country is not in the strength of her armies or her navies, but in the excellence of her laws, and public treasure cannot be better expended than in rendering the laws so clear, simple and accessible that layman and lawyer may understand them, and courts, without uncertainty and doubt, administer them.

Under the Act of March 3, 1901, the Commission was required to revise all laws of a general and permanent nature. What has been done can be best understood from the report made on November 15, 1901, and from the following letter :

WASHINGTON, D. C., June 25, 1902.

P. W. MELDRIM, Esq., Savannah, Ga.

Dear Sir : I acknowledge the receipt of your favor of the twenty-third inst., in which you request information respecting the revision of the laws of the United States.

The first question that will be asked, naturally and properly, is within what time we may be expected to complete the work. The act requiring us to revise all laws of a general and permanent nature was passed on the third of March, 1901. Owing to the interposition of other duties, vacancies and changes in the membership of the commission and other causes, we were not able to finish the work previously assigned to us, viz. : the preparation of the Penal Code, and the revision of all laws relating to the organization, jurisdiction and practice of United States courts, until November last, and we then entered upon the general revision. Since then we have revised over sixteen hundred sections of the revised statutes, taking up all subsequent legislation amendatory thereof or supplementary thereto.

This rate of progress would justify the expectation that we can complete the task in about two years from this time ; but *per contra* there are certain weighty considerations :

1. Every session of Congress is productive of additional legislation which must be digested and inserted in its proper place. For example, after weeks of labor, we had just completed a revision of the title concerning the naval establishment, when Congress, in the annual appropriation bill, passed a lot of provisions which will make it necessary for us to re-revise nearly every one of the thirteen chapters included in that title.

2. The growing practice of inserting general provisions in appropriation bills adds seriously to the difficulty of our labors, requiring the most painstaking vigilance to avoid oversights.

3. We have to deal with many laws that are hastily and inartificially drafted and fail to recognize the existence of previous legislation on the same subject. With other embarrassments, this raises numerous questions of implied repeals which are of the most delicate and vexatious character. An illustration is found in the title just mentioned. The Fifty-fifth Congress passed an act reorganizing radically the personnel of the navy. It was drawn, not by lawyers but by naval officers, and the task of harmonizing its provisions with existing laws was one of inconceivable difficulty.

4. There is a mass of legislation which cannot be assigned to any of the present titles of the revised statutes, such as that respecting interstate commerce, Chinese exclusion, trusts, the government of our insular possessions and other matters embraced within the extended views of what are proper subjects for congressional action that have come into vogue during the past twenty-five years. These are beyond any computation that is based upon the revised statutes.

5. We are required to prepare an index to submit with our revision. An index, to be anything better than a delusion and a snare, must be absolutely thorough and exhaustive. The one in the Boutwell revision of 1878 may be regarded as a model in these respects. With considerable experience in such work, I could scarcely undertake to prepare one equally

good in less than a year; but the time may be reduced by a division of the work.

You will realize from the above suggestions how difficult it is to make a reliable estimate in the premises. I can say, however, that we realize how greatly the profession needs the work, and that we are prosecuting our labors with all possible diligence.

The revision will be annotated with marginal references to the acts of Congress from which each section is taken and to all decisions of federal courts construing or applying the text.

It is to be apprehended that it will be found necessary to print the revision in two volumes. In that event it is deserving of consideration whether it would not be well to include in one volume all of those titles to which a practitioner would have occasion to refer, and in the other only those that appertain to the machinery and operations of the government. It is not wholly certain, however, whether such a division will prove to be practicable.

As already stated, the revision of the titles "Crimes and Offenses" and "The Judiciary" was completed in November last, and separately submitted. I send copies by this mail. They are now pending before Congress in the form of bills but are still in the hands of committees. In the meantime Congress has passed several bills relating to the courts, and further confusion is likely to result. Assuming that a reorganization of our judicial system is desirable, with no excessive estimate of the merits of our work, we feel that it may properly be made the basis of future legislation on the subject, and that Congress should proceed to consider it with as little delay as possible. It is suggested that any members of the bar who accept this view may render great assistance in that behalf by communicating with their senators and representatives.

Very truly yours,

ALEX. C. BOTKIN.

REPORT
OF THE
COMMITTEE ON JUDICIAL ADMINISTRATION AND
REMEDIAL PROCEDURE.

To the American Bar Association:

Your committee respectfully begs leave to report that no special matter has been referred to the committee, but that some consideration has been given to points of practice in two particulars which may be stated as follows:

1. That it should be provided by law that a trial judge, before whom any cause may be pending for trial, be authorized to require to be made by the respective parties a plain statement in writing of the cause or causes of action and of the defence or defences thereto, with or without reference to the pleadings in the cause, and to allow the statements so to be made to stand in lieu of, or in elucidation of, the pleadings of the parties respectively, as may be adjudged to be appropriate or calculated to effect an understanding of the issues of law and of fact involved.

2. That it should also be provided by statute that prior to the trial of a cause based on, or in part depending upon, correspondence by letter or by telegraph, a copy of the correspondence may be filed by the party wishing to use the same, or of so much thereof as shall be expected to be used by such party, whether plaintiff or defendant, respectively, the same to be verified by the affidavit of the party filing, or upon belief by counsel of such party, notice of which filing shall be given the adverse party, and unless the adverse party shall seasonably, before trial, file by himself or by counsel (on belief of such counsel shall be sufficient) a denial under oath of the genuineness of the signature or signatures to such correspondence, or parts thereof, or of the telegram or telegrams, specifying

the same, the genuineness of the correspondence or telegram or telegrams not thus disputed shall be assumed on the trial, saving the right of any party to require the production of the originals, in the absence of excuse therefor, as in other cases.

Without making a special recommendation on these subjects the committee will only add some of the reasons on which the propositions as above stated are grounded.

The suggestion of having a statement made in writing of the cause or causes of action and defence thereto is probably applicable more especially to the states in which common law forms of pleading still prevail than to the states in which the complaint and answer serve as a statement.

In this matter it is not proposed to recommend any statutory change of the pleadings by an abolition of the common law forms, but merely to present the thought that the requirement of such statement by the trial judge, when in his opinion desirable, will be likely to facilitate a fuller and clearer understanding of the cause, and may sometimes simplify the issues and promote promptness of decision.

In regard to the matter of proof of correspondence it may be said that, especially when the correspondence is voluminous, time is often consumed in proving the genuineness of the same, and that the unnecessary expense and loss of time in this regard should be obviated when it can be reasonably done.

Other matters have been considered by the committee, especially by correspondence between the members, but they have been so far covered by other reports that reference thereto in this report is deemed unnecessary.

All of which is respectfully submitted.

A. J. MCCRARY,
Chairman.

PLATT ROGERS.

THOS. DENT.

For the Committee.

REPORT
OF THE
COMMITTEE ON COMMERCIAL LAW.

To the American Bar Association :

Your Committee on Commercial Law begs leave to submit the following report :

At the meeting of the Association at Denver in 1891 your Committee submitted a report upon the Bankruptcy Law in which they reiterated their opinion as expressed in their former reports which had had the approval of the Association :

“ 1. That a Bankrupt Law is wise and beneficent legislation.

“ 2. That the ideal Bankrupt Law is one that

“ (a) Allows every honest debtor to secure a speedy discharge from his obligations upon the surrender of all his property ;

“ (b) Gives every creditor a complete remedy against actual or contemplated fraud on the part of the debtor ;

“ (c) Punishes all fraud on the part of the debtor or creditor with relentless severity.

“ 3. That our present Bankrupt Law, to fulfil these conditions, needs careful and trenchant amendment on the lines that this Association has approved.

“ 4. That the Association should, through its Committee on Commercial Law for the ensuing year, continue its line of work looking to the perfecting of the Bankruptcy Law.”

Upon such presentation of the report the following resolutions were offered and adopted :

“ *Resolved*, That the report of the Committee be accepted and approved ; and

“Further Resolved, That the Committee on Commercial Law for the ensuing year be authorized and instructed to continue the line of work of its predecessors looking to the perfecting of the Bankruptcy Law.”

In pursuance of the mandate of the Association, as expressed in the above resolutions, your Committee has gone on with its previous work in connection with bankruptcy legislation. It has urged upon the Judiciary Committee of both houses of Congress the passage of the Ray Bill amending the present Bankrupt Law in particulars which have heretofore met with the approval of this Association and which tend to make it a better and a cleaner law.

The Ray Bill, in substantially the form in which it has met the approval of the American Bar Association, has passed the House of Representatives by an overwhelming majority. It did not reach the Senate in time to be acted upon at the last session, but there is every prospect that it will pass next session in substantially its present form, and that it will have the approval of the President and become a law.

The members of the Judiciary Committees of the House and Senate, and the Attorney-General of the United States, have expressed their appreciation of the work of your Committee and of the stand taken by this Association on the subject.

The debate in the House upon the passage of the Ray Bill was most interesting. The splendid majority by which the bill was passed showed the favor in which the principle of the Bankruptcy Law is held by the people and their representatives. The criticisms of the minority showed rather that there were certain evils in the law as it now stands, and which it is the object of the proposed amendments to obviate, than that there was any well-grounded or deep-founded objection to a proper bankrupt law.

We believe that we are justified in expressing the opinion that the Bankrupt Law has come to stay and that it will hereafter remain a permanent part of American jurisprudence. The sentiment of the bar and of the people is overwhelmingly

in its favor—more so than ever before. This result is due, we believe, very largely to the continued and emphatic approval which this Association, at the request of its Commercial Law Committee, has given to it.

We believe that the way to save the Bankrupt Law is to improve it—to make it better worth saving. The Ray Bill goes a long way in that direction. It obviates many, if not most, of the objections that are raised against it. It makes it a law of which the American people may be proud and to which they may give their unhesitating support.

But, in our judgment, it does not go far enough. We have not hesitated to support the bill because it was entirely good, so far as it went, and we were glad to get so much. We believe, however, that the ultimate bankrupt law will be as great an improvement on the law as the Ray Bill leaves it, as the law as the Ray Bill leaves it is on the law as it stands now.

Mr. Ray, in his splendid speech on the passage of the Ray Bill in the House of Representatives, truly said:

“There is no civilized nation on the face of the world doing great business and having great commercial interests that does not have a bankrupt law on its statutes.”

With very few exceptions, however, the initiation of bankruptcy legislation among the nations of the world has taken place since the adoption of our Constitution.

The Constitutional Convention that framed the Constitution of the United States was the most far-seeing body of statesmen ever gathered together on earth. They were making a constitution for a nation of four millions of people occupying the limited area between the Atlantic Ocean and the Mississippi River and stretching from Maine to Georgia. They had little in either history or experience to guide them, and yet they framed a constitution which has been amended less times in nearly a century and a quarter than can be counted on the fingers of one's hands, and which serves acceptably as the basis of the government of a nation that stretches from Porto Rico to the Orient and from the Yukon to Samoa.

In nothing, however, is the far-sightedness of the Constitutional Convention more manifest to-day than in its action on the bankruptcy question. Section 8 of the Constitution provides:

“The Congress shall have power

* * * * *

3. “To establish . . . uniform laws on the subject of bankruptcies throughout the United States.”

The same section gives Congress power

“3. To regulate commerce with the foreign nations and among the several states and with the Indian tribes.

* * * * *

“5. To coin money, regulate the value thereof and of foreign coin and fix the standard of weights and measures.

“6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

“7. To establish postoffices and post-roads.

“8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

In the scarcely more than a hundred words quoted above from this section of the Constitution is found the authority for all that the laws of the United States have done for trade and commerce among its people and with foreign peoples. It is doubtful if a hundred words in the English language have ever been used to better purpose.

The provision for bankruptcy legislation must be read in connection with the other subdivisions of the section of which it forms a part. It is but one of a number of provisions relating to trade and commerce. The Constitution-makers considered the power of Congress over trade and commerce incomplete until they had provided for uniform laws on the subject of bankruptcy throughout the United States.

The essential logic of the Constitution of the United States is that all citizens of the United States, of whatever state they

may also be citizens, shall have the same rights of person and of property and enjoy the same privileges. Especially is that so in relation to trade and commerce. Congress is given power to regulate commerce among the several states and to establish "uniform laws" on the subject of bankruptcies in order to insure to the citizens of every state all the rights and privileges of the citizens of any state.

This is emphasized still more in Section 9 of the Constitution :

" 5. No tax or duty shall be laid on articles exported from any state.

" 6. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another ; nor shall vessels bound to or from one state be obliged to enter, clear or pay duties in another."

It is still further emphasized in Section 10 :

" 1. No state shall . . . coin money, emit bills of credit, make anything but gold and silver coin a tender in payment for debts, pass any . . . law impairing the obligation of contracts . . .

" 2. No state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the Treasury of the United States ; and all such laws shall be subject to the revision and control of the Congress.

" 3. No state shall, without the consent of Congress, lay any duty of tonnage . . .

The sum and substance of it all is that in all matters relating to trade and commerce every citizen of the United States shall stand on a parity with every other citizen.

Trade sometimes makes the fortune of the trader and sometimes results in misfortune. It sometimes leads to success and sometimes to failure ; and so the Constitution-makers thought it necessary to give to Congress power to establish uniform

laws on the subject of bankruptcy in order that when bankruptcy came the citizens of all the states might be assured of fair treatment and an equal participation in the assets of the bankrupt. The primary object of bankruptcy legislation, as seen from the view-point of the makers of the Constitution, was not so much to discharge a debtor, as to assure the fair and equal division of his assets. Otherwise—if one state could give a preference or a privilege to its own citizens in the division of the bankrupt's assets—all the citizens of the United States would not stand on a parity. Citizenship of the United States would mean less and citizenship in a particular state would mean more.

We believe that the makers of the Constitution of the United States reasoned well and that it is of the utmost importance that there should be uniform laws on the subject of bankruptcy throughout the United States, if for no other purpose, to assure equal distribution among all creditors of the bankrupt's assets.

The present Bankrupt Law, with the Ray Bill amendments, in our opinion, comes short of accomplishing the full measure of equality and equity between the citizens of the different states intended by the Constitution-makers in two particulars.

1. It does not provide for the administration in the Bankrupt Court of the insolvent estate of a deceased person.

Some one has wittily, but truly, said that all an insolvent debtor had to do to beat the Bankrupt Law was to die before an adjudication in bankruptcy could be made against him.

He may have

“(2) Transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors, or

“(3) Suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or

“(4) Made a general assignment for the benefit of his creditors” (which general assignment may be under the laws of many of the states as full of preferences as he chooses),

And still, if he dies before proceedings in bankruptcy against him can be brought to the point of adjudication, his scheme is a success, his favored creditors take all there is, and the unfavored are without a remedy.

We believe

(1) That Congress has the power to extend the operation of the Bankrupt Law so that the insolvent estate of a deceased person shall be administered in the Bankruptcy Court.

In construing the provision of the Constitution granting power to Congress to establish uniform laws on the subject of bankruptcies we must, as we have already said, read not only the words which grant this power, but their context, so as to discover what the Constitution-makers desired and intended to accomplish. Reading Subdivision 4 of Section 8 in connection with the other subdivisions of the same section and the subdivisions from Section 9 and Section 10 above quoted, it seems to be quite clear that it was intended to give Congress the power to pass such uniform laws in reference to the estate of a living or deceased bankrupt as would insure the fair and equal distribution of his estate among all his creditors without regard to state citizenship. That purpose cannot be fully accomplished unless the Bankruptcy Court is given jurisdiction over the bankrupt estate of a deceased person as well as over the bankrupt estate of a living person upon the petition either of the personal representative of the estate or of aggrieved creditors.

(2) We believe that Congress not only has the power but should exercise it.

A preference may be given under state laws in the settlement of insolvent estates in one of two ways :

a. By preferring in some way a citizen of that particular state.

This should never be permitted. Our national greatness is founded upon equality of national citizenship and no state

should be allowed to prefer its citizens to the citizens of other states in the administration of the assets of the deceased. In trade throughout the United States the citizen of one state must be regarded as the citizen of every state and must have all the rights and privileges appertaining to such citizenship—as well in the case of a deceased as in the case of a living creditor.

b. A more usual way is for the state to recognize a preference obtained by an attachment or judgment against the insolvent, or one given by the voluntary or intentional act of the insolvent, before his decease.

This is equally objectionable. Nowhere is the equity maxim “Equality is equity” more equitable than in the distribution of the assets of an estate—of a deceased or living debtor—where all cannot be paid in full. The old policy of preferring the diligent or favored creditor is contrary alike to the spirit of our national life and the purpose of an equitable bankruptcy system. The race to get in first should not be encouraged or permitted. It is difficult to see any reason why it is less vicious if the debtor dies than if he lives—why an attachment, for instance, against a sick man who dies should be better than one against a well man who lives, or why a preferential deed given by a man on his deathbed should stand when the same deed, if he lived, would be set aside.

2. We think that in addition to the acts of bankruptcy recognized by the Bankrupt Law as it will be with the Ray amendments added, and in addition also to the further acts of bankruptcy which we have recommended in our previous reports and which this Association has approved, it should be made an act of bankruptcy for a person or corporation engaged in banking or trade to fail to meet his or its outstanding business obligations within some definite time after they become due.

The creditor, in the evolution of civilization, has been required more and more to relinquish his hold upon the person of the debtor and to place his entire reliance on the debtor's property. In the early history of our common-law jurispru-

dence the only execution was against the person. Execution against the property is a comparatively modern innovation. *Bardell against Pickwick* is a correct picture of the state of our early jurisprudence. Mr. Pickwick was a man of great wealth, but the only way Mrs. Bardell could collect her judgment was to put Mr. Pickwick in jail till he got ready to pay it. After the execution against property came the remedy of a creditor's bill to set aside fraudulent conveyances; then our modern inquisitorial supplementary proceedings, and finally involuntary bankruptcy proceedings, by which an insolvent person's estate can be seized and applied to the payment of his debts without the process of judgment and execution. Meanwhile the remedy of execution against the person has been more and more narrowed, until to-day nothing but the shadow of it remains, and, in our judgment, even that shadow should be taken off the statute books and civil and criminal remedies altogether and forever disassociated.

We are told that in Rome we must do as the Romans do. There is no hardship in requiring a banker or a trader to do as bankers or traders do or should do. The payment of the ordinary business obligations of a banker or a trader in the usual course of such business is a thing which the law may fairly insist on. If a banker cannot or will not pay his depositors on demand he should not be allowed to continue in the banking business. If a trader cannot meet his notes or pay for goods purchased he should give place to some one who can. We are an interdependent community. The trader owes his obligation to another trader. If he pays promptly the other man can pay promptly, and so on all along up the line. If the first man fails to meet his payments, then they suffer all along the line. All that we contend for is that when a banker or a trader becomes unable to do business as bankers and traders should do, his creditors should have the right to say "You shall not take any further chances with the assets which are the only security for the payment of our debt, but the law will take those assets and administer them for your creditors' benefit."

In this way we broaden and improve the remedy against the estate of the debtor while we are relieving his person altogether. What the creditor gains in one direction he gives up in another. The remedy that he gains against the assets he gives up against the person.

Really it is the debtor, more than the creditor, who is concerned in making the basis of credit broader and more satisfactory.

The debtor often has no choice. He must get credit or go out of business. The creditor always has a choice. He can keep his goods or his money, and the relation of debtor and creditor is never initiated. If he is not satisfied with the basis of credit which the jurisprudence of the nation furnishes him or which a particular debtor can offer, he keeps his property and his money and the poor debtor or borrower is the man who suffers. If he is satisfied with the basis of credit offered, he gets simply a profit on his goods or interest on his money, but the debtor or the borrower gets the opportunity of establishing or continuing himself in business and making a livelihood for his family and perhaps a fortune for himself.

Efficient laws for the collection of debts are far more important to the poor man than to the rich man. If all laws for the collection of debts were abolished, society would tend to become stationary. The rich would retain their riches, the poor would never have a chance to acquire any for they could get no credit. The honest poor man is the most concerned of all men in the establishment of credit on a broad and secure foundation. It is that credit which gives him his opportunity in the world.

There was a time when we talked in this country about debtor and creditor states, but the savings banks of the nation are filling up so that they are overflowing and the creditors of the nation are coming to be found in its most remote corners. There are no longer creditor and debtor states or creditor and debtor localities, but if there were it would be the debtor states and debtor localities that would be most concerned in the crea-

tion of such a jurisprudence as would best secure to the creditors of the nation the collection of their just debts, and in the perfection of the Bankrupt Law so as to make it a law for the protection of the creditor as much as for the relief of the debtor.

Respectfully submitted,

WALTER S. LOGAN, *Chairman*,
HENRY BUDD,
GARDINER LATHROP,
GEORGE WHITELOCK,
JOHN MORRIS, JR.

NEW YORK, July 15, 1902.

REPORT

OF THE

COMMITTEE ON OBITUARIES.

The Committee on Obituaries announces the names of members who have died since the last meeting, as follows, viz :

DISTRICT OF COLUMBIA.

CARLISLE, CALDERON, Washington.

GEORGIA.

FALLIGANT, ROBERT, Savannah.

PEABODY, FRANCIS D., Columbus.

ILLINOIS.

ISHAM, EDWARD S., Chicago.

INDIANA.

*WOODS, WILLIAM ALLEN, Indianapolis.

MARYLAND.

*FISHER, WILLIAM A., Baltimore.

MITCHELL, JOHN H., La Plata.

SLOAN, DAVID W., Cumberland.

MASSACHUSETTS.

DAVIS, JOHN, Lowell.

*FULLER, HORACE W., Boston.

HASKELL, FREDERICK F., Boston.

THAYER, JAMES BRADLEY, Cambridge.

WESTON, MELVILLE M., Boston.

MICHIGAN.

*CHAMPLIN, JOHN W., Grand Rapids.

*WEBBER, WILLIAM L., Saginaw, E. S.

MISSOURI.

HITCHCOCK, HENRY, St. Louis.

MADILL, GEORGE A., St. Louis.

NEW YORK.

HOADLEY, GEORGE, New York.
 *STERNE, SIMON, New York.

OHIO.

BRICE, HERBERT L., Lima.
 *MCKINLEY, WILLIAM, Canton.
 WALD, GUSTAVUS H., Cincinnati.

PENNSYLVANIA.

HUEY, SAMUEL B., Philadelphia.
 LANCASTER, JOSEPH CAMPBELL, Philadelphia.

TENNESSEE.

GILLHAM, GEORGE, Memphis.

VIRGINIA.

MCRÆ, WILLIAM P., Petersburg.

WISCONSIN.

FRAWLEY, THOMAS F., Eau Claire.

JOHN HINKLEY,
 J. W. FELLOWS,
 WILLIAM P. BREEN,
Committee.

Saratoga Springs, N. Y., August 27, 1902.

NOTE.—This report includes those members of whose death the Committee have been informed up to August 27, 1902. Obituary notices (including those of some members not in the above report) will be found near the end of this volume.

*Obituary notice published in the 1901 report.

REPORT
OF THE
COMMITTEE ON LAW REPORTING AND DIGESTING.

To the American Bar Association :

No particular question was referred to your committee by the Association, and we have not received from any of the members any request for investigation or information, and we have little to add this year to the suggestions made in our previous reports.

In our report last year we said that we would endeavor to ascertain the cost of the reports in the various states with a view to comparison and to suggesting some means of reducing the cost of the reports to the profession and especially whether the reports of the Supreme Court of the United States could not with advantage be published by the government and furnished to the bar at cost.

A list of the prices of the reports in the various states was printed in the elaborate report of the committee on this subject in 1894, and may be found in the proceedings of that year. We have obtained a list of the prices at the present time ; the prices, in most instances, are the same as in 1894.

The prices vary greatly in different states. In Louisiana, for example, a volume of the annual reports costs fifteen dollars, and in New York the nominal price of a volume of the reports of the Court of Appeals is seventy-five cents. The Louisiana reports, however, contain about twelve hundred pages, as against six hundred in the reports of the New York, Massachusetts and other northern states ; and while the legal price of the New York reports is seventy-five cents, this is only for those who call for them at the office of the state printer, and they are sold for more at the booksellers. The difference in the price per volume is not a fair test of the com-

parative cost of the reports, because of the difference in the type, paper and the number of pages. The low price in New York can hardly be used as a test because the reports are printed by the state and may be issued at a loss, and because the number of copies sold is very large.

The price of the reports is 75 cents a volume in New York; \$1.25 in Pennsylvania and Nebraska; \$1.50 in Arkansas, Indiana and Ohio; \$1.65 in Colorado; \$1.75 in Maine and Missouri; \$1.80 in Massachusetts; \$1.90 in Wisconsin; \$2.00 in Michigan and Iowa; \$2.25 in Illinois; \$2.50 in California, Connecticut, Texas and West Virginia; \$2.75 in Georgia, South Dakota and Vermont; \$3.00 in Florida, New Jersey, Tennessee and Nevada; \$3.25 in North Dakota; \$3.50 for the Illinois Appeals; \$3.50 in New Hampshire, North Carolina and in Alabama, when purchased of the Secretary of State; \$3.60 in Kentucky; \$3.75 in Virginia; \$4.00 in Maryland, Mississippi, Montana, New Mexico, Oklahoma, Oregon and Washington; \$4.50 in South Carolina; \$5.00 in Arizona and the District of Columbia, Idaho, Rhode Island, Utah and Wyoming; \$9.00 in Delaware and \$15.00 in Louisiana, but volume fifty-two of the Louisiana Annual is sold at a lower price. The price of the United States Supreme Court Reports is \$2.50 a volume.

From this statement it appears that in some of the large states, where the circulation is large, the reports are purchased at less than two dollars per volume, and that in twenty-one states the price per volume is less than three dollars. The conditions vary in the different states and there is a difference in the size and character of the volumes. We cannot judge what the price ought to be, but we mention these facts so that where higher prices prevail members of the bar may themselves ask the reason why, and may, if it seem proper, take measures to have the cost of the reports reduced.

The fact that in eight states the reports are sold at two dollars per volume and under, would seem to show that the reports of the Supreme Court of the United States ought not

to cost more than that. They have the whole country for their market and the sales would be larger if the price were lower. The opinions are printed in the Government Printing Office before they are printed for publication, and it would seem that, either through the Government Printing Office or by means of a better bargain with private publishers, these reports might be furnished to the profession at much less than their present cost. It is certainly the duty of the government, whether national or state, to see to it that the cost of the reports is not greater than is necessary to secure the best work on the part of the reporter and the printer. The reports of the decisions of the courts are absolutely necessary to both judges and lawyers in the performance of their duties, and their publication ought not to be made a matter of undue private gain.

Since our last report a Digest of the first sixty volumes of the Nebraska Reports has been published by the Bancroft-Whitney Company. It was prepared by E. C. Page, of the Omaha Bar. He has recognized the importance of uniformity in the classification systems in the different states, and has followed the suggestion made by this committee that the surest way to attain this result was to adopt as a basis the system of one of the Digests used by all the states in common. The classification in the new Nebraska Digest is based on that of the American Digest. The author has made abundant use of cross references. This is especially important in view of the many different classifications that prevail in this country and is essential to every good Digest. Your committee urge again upon the Digest-makers in the various states that they strive to attain uniformity of plan so far without wholly disregarding local tradition and that they be generous in cross references.

It is not beyond the province of this committee to refer to the fact that during the past year four more states have adopted the Digest of the law of commercial paper called the "Negotiable Instruments Act."

bers, together with the fact that we have a Section of Legal Education, numbering among its members many distinguished educators of our land, has a tendency to cast a doubt upon the possibility of interesting the great teaching body in the subject.

It is encouraging to recall that all the great work of the kind which engages our attention has been the labor of individuals who were great teachers of the law. Such a work requires years of unremitting study with unbroken continuity of thought.

Your committee deem it wise as a preliminary to the consideration of formal schemes of legal classification, to point out the vocation or utility of legal classification, embracing therein, of course, the fields in which classification is useful, the present condition of our Jurisprudence, and the reasons therefor.

As a general theme, therefore, has been chosen "The Vocation of Legal Classification," and, in the course of this report, an attempt will be made to show that the vocation of Legal Classification properly understood and intelligently applied is,

1. To bring to the surface the fundamental principles of our law and organize them into a system.
2. To make the law more easily ascertainable (knowable).
3. To make it more certain and clearly stated.
4. To introduce a tendency toward uniformity which will ultimately result in practical uniformity.
5. A condensation and reduction in the bulk of expressed law.
6. To reduce the mass of statutes, decisions, constitutional rules and principles to a tangible, organized, manageable body.

THE VOCATION OF LEGAL CLASSIFICATION IS TO MAKE THE TREATMENT SCIENTIFIC.

That process of logical differentiation known as analysis is the beginning of science. Until a point is reached where analysis begins, the processes of investigation are mere experiment, empiricism.

James Wilson says :

“ You have heard much of the celebrated distribution of things into genera and species. On that distribution, Aristotle undertook the arduous task of resolving all reasoning into its primary elements ; and he erected, or thought he erected, on a single axiom, a larger system of abstract truths than were before invented or perfected by any other philosopher. The axiom, from which he sets out, and in which the whole terminates, is, that whatever is predicated of a genus, may be predicated of every species contained under that genus, and of every individual contained under every such species. On that distribution likewise, the very essence of scientific definition depends: for a definition, strictly and logically regular, ‘ must express the genus of the thing defined, and the specific difference, by which that thing is distinguished from every other species belonging to that genus.’ ” (1 Wilson’s Wks. 51.)

German science is dominated by this idea :

“ Criticism is nothing else than the art of putting a thing where it belongs. What order does with tangible objects, is rendered possible in things of the mind by criticism that we may have (to use the English proverb) a place for everything and everything in its place.” (“ German Criticism,” by Richard M. Meyer, *The International Monthly*, May, 1901.)

Definitions, rules explaining the different forms of associated subjects, schemes of classification, juristic encyclopædia, are but the visible results of the application of the underlying principles of analysis.

Science invokes other processes, but it ends with the practical art of classification.

Jurisprudence is the science of social organism. Law is that body of underlying principles and visible rules which obtain at any given time. While Jurisprudence can no longer be said to embrace within its limits the knowledge of things divine and human, the science of the just and the unjust, it does embrace everything which relates to that ordered freedom

which makes up the precepts of human intercourse, and the reach into the realm of the ethical and philosophic is deeper than is commonly understood.

Legal classification is the practical application of the principles of legal analysis to a given body of positive law. It is a branch, and an important one, of the science of Jurisprudence, and has for its object the exposition of the system of law to which it is applied.

“The end of all classification,” as is remarked by Mr. Justice Holmes, “should be to make the law knowable; that system best accomplishes that purpose which proceeds from the most general conception to the most specific proposition or exception in the order of logical subordination.” (7 Am. Law Rev. 47.)

It invokes (as methods of investigation and exposition) those processes of analysis which, if ignored, leave the body of law in which it is ignored, deficient in that quality which the jurist terms the scientific.

Your committee ventures to suggest that the greatest impediment to progress in Jurisprudence consists in the failure to appreciate the importance of a scientific system of legal classification.

We have law enough and good laws. There is no demand for change in the principles of American Jurisprudence. No political dreamer would suggest a form of government better adapted to attain the ends of individual liberty and orderly government among an enlightened people.

That our system of government and law are not yet so perfectly balanced as to preserve the desirable equilibrium which it was the intention of the framers of our constitution to establish, results merely from the fact that it is a human institution and that new conditions have arisen not foreseen, and which could not have been foreseen, and which must always look for their adjustment in the intelligence and integrity of the existing generation.

The strength of the scheme of government established by our ancestors consisted in the character of the fundamental legal principles they adopted. Its elegance was the result of a most profound and thorough conception of the highest development of Jurisprudence. Its glory consists in the measure of liberty and prosperity which it has enabled our own people to enjoy and the influence which it has exerted upon the civilization of the world at large.

Your committee desires to say that, in the remarks which shall hereafter be made in reference to the condition of Jurisprudence abroad, it is not intended to yield or detract from the position, which may with justice be taken, that the American statesman who constituted the Continental Congress and the National Convention of 1787, and who launched this great national fabric, were, in truth and in fact, the leaders of modern Jurisprudence and that the American people have little further to do than to appreciate thoroughly the principles upon which they proceeded, grasp the rules which they laid down for their application and develop the Jurisprudence in accordance with those principles and the actual conditions which must, in the nature of things, be constantly changing.

Stated in another form, the position which your committee desires to advance is that progress must come by bringing to the surface the elements of our system, and building them into one harmonious system. The great fundamental principles upon which the fabric of our laws rest, constitutes a system, and it is the reverse of science to treat the expressed rules as the whole, or as the most important part of that system.

NECESSITY FOR A UNIFORM SYSTEM.

Uniformity of law throughout the United States is a condition the demand for which becomes greater in proportion to the practice of interstate intercourse and communication.

The laws of the several states in relation to those things which are within the state's jurisdiction must forever continue distinct, though interdependent, bodies of law; but they never

were, are not now and they never will constitute separate systems of Jurisprudence. They are but parts of such a system. There are many logical reasons why the laws should be practically uniform, and none why they should be conflicting. Uniformity does not impair the autonomy of the state.

THE CAUSE OF THE DIVERSITY.

The diversity and conflict of law has existed for so long a period as to engender a belief that this diversity must exist, and the impression prevails that the process of rendering it harmonious is stupendously difficult. If we look beneath the surface we may discover that both these impressions are erroneous.

There was a *cause* for the diversity, but this was not a logical *reason*, and consisted of conditions transient in their nature and which have ceased to exist. While the cause remained, logic was helpless. Now that it is removed, we may hope for better things.

Kent recognized the condition, and made the first part of his book the Jurisprudence and Constitution of the United States; the second part, the Municipal Law (of the States).

For three quarters of a century, a condition which no theory could counteract was constantly operating to bring about the very diversity and contrariety which is now universally recognized as a great inconvenience. The cause consisted in the diversity of public opinion among our people as to the nature of the Federal Union. Many held that the National Union was not indissoluble and that there was no field in which it was paramount. What was then supposed to be local interest and natural isolation prevented the desire or need for uniformity.

It is sometimes supposed that our states started with a common uniform basis of Jurisprudence, but a more careful examination will show that the underlying conceptions of things differed very materially throughout the early colonies.

The barons of Baltimore, the proprietors of Pennsylvania, the inhabitants of chartered colonies disagreed with each other in many important points of tenure, sovereignty and policy, and the contest with a common foe, and the adoption of a common constitution, which, made out of these diverse states one nation, did not change the hearts of the people.

It is in these natural causes then that are found the reason for the conditions which came about and which we of this generation realize and are gradually overcoming.

In the solemn arguments before the court in *McCullough vs. Maryland* (4 Wheat. 410), the character of the National Union was the subject of serious dispute and argument.

The great Chief Justice stated the argument as follows:

“The counsel for the state of Maryland have deemed it of some importance in the construction of the constitution to consider that instrument not as emanating from the people but as the act of sovereign and independent states.”

Two years later, in *Cohen vs. Virginia* (6 Wheat. 264) the nature of the Union was one of the principal subjects of the argument, and to this argument Marshall replied:

“The argument in all its forms is essentially the same. It is founded not on the concrete words of the constitution, but on its spirit, a spirit extracted not from the words of the instrument, *but from his views of the nature of the Union* and of the great fundamental principles on which the fabric stands. To this argument in all its forms the same answer may be given. Let the nature and object of our Union be considered; let the *great and fundamental principles* on which the fabric stands be examined; and, we think, the result must be that there is nothing so extravagantly absurd, in giving to the court of the nation the power of revising the decisions of local tribunals on questions which affect the nation.”

The same underlying questions will be found running through all of the great determinations of that court. In the recent *Insular Cases* (waiving entirely the weight of all arguments) the

decision turned upon the view, held by the majority, of the nature of the government, and the reaching back is thus stated by Mr. Justice Brown (in *Downes vs. Bidwell*, 182 U. S. 244):

“The case also involves the broader question whether the revenue clauses of the Constitution extend of their own force to our newly acquired territories. The Constitution itself does not answer the question. Its solution must be found in the nature of the government created by that instrument, in the opinion of its contemporaries, in the practical construction put upon it by Congress and in the decisions of this court.”

It is well understood that until many years after the late Civil War, there was no common feeling or desire for a single Jurisprudence and uniform state laws.

This underlying diversity of sentiment was followed by the natural diversity in the exposition of our Jurisprudence and our law, and we need but to refer to the writings of the Elder Tucker as constituting an early exposition based upon one view, and the writings of that distinguished jurist, James Wilson, of Pennsylvania, the ablest exponent of the contrary view, to perceive clearly that, until a time should arrive when there was in truth and in fact a common Jurisprudence and uniform habits, customs, principles and usages, the time was not ripe for an exposition which could receive either universal approbation or have uniform application.

In the meantime the scientific side was suffering in a greater degree than the practical. There were, to be sure, those who believed that they could run ahead of the actual existing condition of public opinion and indulge a fiction not based on fact.

No one has made clearer the distinction between the theoretical unity of the American states and the actual separateness of their condition prior to the late Spanish War, than Professor Von Holst. Speaking of the incongruity of the idea of making one out of the many and yet preserving the individuality and integrity of the states, he says:

“But actual circumstances are of more weight in politics than abstract theories, however conformable to the demands of

reason these latter may be. The conclusion drawn by Wilson from these premises was therefore erroneous, spite of the fact that his argument was formally correct. He closed the argument with these words: 'As to those matters which are referred to Congress we are not so many states: we are one large state. We lay aside our individuality whenever we come here.'

"This might be desirable in the highest degree, but it was not a fact. 'The individuality of the colonies' was not, in reality, as Adams claimed, a 'mere sound'; it was an undeniable fact, which made itself felt at every step. Wilson, therefore, demanded an impossibility when he asked that the representatives should put it aside, and leave it at home when they came to Congress, as if it were a garment. This might have been possible to Wilson, for he was not born and had not grown up in America. But particularism had become to such an extent part of the flesh and blood of the native-born colonists that it could not be renounced; nay, that it became a measure of necessity to acknowledge its supremacy after the first moment of excitement was over, and the separate interests of the states came in conflict, whether really or only apparently, with the general welfare. . . .

"The American statesman's dictionary was written in double columns, and the chief terms of his vocabulary were not infrequently inserted twice: in the right-hand column in the sense which accorded with actual facts and was in keeping with the tendency towards particularism; in the left, in their logical sense, and the sense which the logic of facts has gradually and through many bitter struggles brought out into bold relief, and which it will finally stamp as their exclusive meaning.

"Nothing but the bitter experience of many years has been able to make American statesmen even partially conscious that they have been using this double-columned political lexicon. The nature of the state was to such an extent a seven-sealed enigma to them, that they, *bona fide* and in the very same breath, used the same words in the most opposite senses, and employed words as synonymous which denoted ideas absolutely irreconcilable. . . .

Von Holst very properly quotes Hume: "'To balance a large state or society, whether monarchical or republican, on

general laws, is a work of so great difficulty that no human genius, however comprehensive, is able, by the merit dint of reason and reflection, to effect it. The judgments of many must unite in this work. Experience must guide their labor. Time must bring it to perfection, and the feeling of inconveniences must correct the mistakes which they inevitably fall into in their first trials and experiments.' " (Von Holst, Const. Hist., Vol. I., p. 13.)

Speaking of this condition, Mr. Leonard A. Jones, in an address before the Virginia Bar Association (1894), says:

"The isolation of the colonies from each other through the great lack of roads and mails tended to strengthen the differences in mode of life and in social habits; and these differences were reflected in the laws. These differences continued after the Revolution, when the colonies had become states. The people of one state knew very little, and, except in rare instances, cared very little about the statute law of any other state. Fortunately the common law was the inheritance of all the original states and of nearly all that afterwards came into the Union. This system of Jurisprudence, essentially the same in principle and administration in all the states, was an agency most potent in upbuilding and upholding the political union into which the states had entered. The states were supreme in their power to make laws, except so far as this power had been surrendered; and each state freely changed the common law and engrafted upon it new provisions without regard to the legislation of other states. The wonder is that the common law system through statutory changes did not become more diverse and discordant in the several states than it is; *though the common law, when left alone, tends to unity throughout all states and countries in which it prevails.* . . .

"The steamboat and the steam railroad, the electric telegraph and the electric telephone have, within fifty years, and mostly within thirty years, wrought a complete revolution in the social and business methods of our people. They have broken down the barriers of state lines for all purposes of commerce and social intercourse."

As early as 1823, Mr. Dane said:

“A serious evil we are fast running into in most of our states. This inundation of books made in different states and nations will increase until we can shake off more of our local notions. Our true course is plain; that is, by degrees to make our laws more uniform and natural, especially when there is nothing to make them otherwise but local feeling and prejudices. We have, in the common and federal law, the materials of national uniformity in many cases. We have a national judiciary promoting this uniformity, and we have lawyers learned, industrious and able to second the judiciary. We only want a general, efficient plan, supported with energy and national feeling.”

While, standing here in the consummation of an indestructible union of indestructible states, this seems to express precisely our sentiment, and in considering the whys and wherefores which have deferred the progress in Jurisprudence and retarded the accomplishment of what is clearly the most natural and most desirable thing, we should not ignore the fact that the reason which he mentions “that there is *nothing more* to make them otherwise than *local feeling* and prejudices,” was an impediment and obstacle which absolutely barred the way.

The Jurisprudence of a nation cannot progress beyond its civilization. It cannot run counter to public opinion. At the present time, however, every condition is favorable, and precisely as Mr. Dane said in 1823, we can now say: “We only want a general, efficient plan, supported with energy and national feeling, and there is no reason to urge the national feeling. There is no occasion to urge or desire anything further in that direction. All that is now needed to the progress of our jurisprudential edifice is a plan, the architectural framework, in accordance with which we may make the structure symmetrical and convenient.”

The idea that the bulk of the law is increasing in proportion to the volume of decisions is a plain fallacy.

Mr. Justice Holmes says all that need be said on this subject:

"The means of the study are a body of reports, of treatises and of statutes in this country and in England, extending back for six hundred years, and now increasing annually by hundreds. . . . Far the most important and pretty nearly the whole meaning of every new effort of legal thought is to make these prophecies more precise and to generalize them into a thoroughly connected system. . . .

"The number of our predictions when generalized and reduced to a system is not unmanageably large. They present themselves as a finite body of dogma which may be mastered within a reasonable time. It is a great mistake to be frightened by the ever-increasing number of reports." (Harv. Law Rev., Vol. X, pp. 457-8.)

THE RELATION OF CLASSIFICATION TO JURISPRUDENCE.

Quaint and curious in its expression is the following statement from Sir Henry Finch (*temp.* 1579), but interesting from the fact that modern science in England has come again to this high plane.

Finch, speaking of the importance in law of rules taken from foreign learnings (meaning learning separated from the law), says:

"Of the first sort are the principles and sound conclusions from foreign learnings; out of the best and bowels of divinity, grammer, logic; also from philosophy natural, political, economics, moral, though in our reports and year books they come not under the same terms, yet the things which there you find are the same; for the sparks of all sciences in the world are raked up in the ashes of the law: and well doth one say, *Non ex praetoris edictis, neque a 12 tabulis, sed penitus ex intima philosophia haurienda juris disciplina est.* He that will take the whole body of the law before him, and go really and judicially to work, must not lay the foundation of his building in estates, tenures, the gift of writs, and such like, but at those current and sound principles which our books are full of." ("Finch's Law," p. 6.)

Observe how completely, according to the view of Professor Hastie, who translates the German jurists for use in the English universities, this is again the vogue:

“The philosophy of law is here dealt with in its practical and concrete relation to positive law. . . .

“The philosophy of law, after many deviations, has again come upon the right path; it has its sphere of activity in the midst of what is positive; it has entered into the fresh moving life of the time. It has to reconcile what exists with the demands of reason, ‘to recognize the rose in the cross of the age.’ It has accordingly even changed its name, and, in virtue of its giving regard to experience, it has been designated ‘Philosophy of Law *and* Politics,’ or ‘Philosophy of Law *and* Comparative Jurisprudence.’ This ‘*and*’ however, is superfluous; the designation is tautological, and the philosophy of law is not to be regarded as a special science. As soon as it is seen that the philosophy of law has no other function than the spiritual permeation of positive law, the contrast between the philosophy of law and the science of positive law disappears; for their contents are really the same. From this standpoint Jurisprudence is generally represented in the present work as the *science of law*, rather than the science of *right*, but the correlative principles of right are always presupposed, even when they are not overtly expressed in the more concrete current terminology of positive law.” (Outlines of Juris., Hastie, 175 N.)

Modern Jurisprudence aims at a formal exposition of the whole body of legal rules in accordance with their internal relation in such a way as to make their comprehension more easy and their application more certain. Call it by what name you will, it is the one thing needful. This is the office of the juristic encyclopædia of the famous analytical jurists.

It is conceived that the real cause for the present condition is found in a failure to appreciate the true nature and province of Jurisprudence, and to apply it to the practical business of making, studying, teaching and practicing law.

A distinguished English jurist has said that modern Jurisprudence is essentially a German creation, and, while it is not necessary to concede so much, it must be conceded that within the last half-century its study has been more intelligently and consistently prosecuted in that country than elsewhere.

What, then, is meant by modern Jurisprudence?

All students of the logical sciences understand that modern science invokes the same principles which constituted the basis of the Aristotelian system of philosophy, very concisely expressed by Spencer in his *Synthetic Philosophy*:

“The doctrine that correlatives imply one another has for one of its common examples the necessary connection between the conceptions of the whole and the part. Beyond the primary truth that no idea of a part can be framed without a nascent idea of some whole to which it belongs, there is a secondary truth that there can be no correct idea of a part without a correct idea of the correlative whole. There are several ways in which inadequate knowledge of the one involves inadequate knowledge of the other.”

This is the identical idea now applied by modern German critics. It is clearly explained in an article, by Richard Meyer, in the *International Monthly* for May, 1901:

“*What they aimed at, these disciples and successors of the great critics, was the same, in spite of their different fields, in spite of their different natures. They aimed at a wholly new kind of comprehension, one essentially different from what had been previously understood—as essentially different as is the insight into the anatomical structure of a plant which the microscope gives from that which the eye had previously permitted. No! The difference is still greater. For it is a question of a qualitative, not merely a quantitative, progress in comprehension.*

“*For us there is no longer such a thing as comprehension apart from universal context. No isolated phenomenon exists any longer, or, if it exist, it can be explained from its isolation.*”

In the German schools the same idea dominates the conception of Jurisprudence.

“SCIENCE,” says Falck, “in the objective and universal meaning of the term, designates a body of truths methodically arranged. The sciences are divided theoretically into several branches or departments, according to the different objects of

knowledge with which they deal. . . . In this way the sum of knowledge which relates to right and law practically constitutes the special science of Jurisprudence. . . .

“Three things are requisite in order that the representation of the rules of law recognized in a country may really deserve the name of a science. First, the principles of right and law must be so completely treated that no jural relation shall remain unexplained, at least in its essential points. Second, the grounds upon which the jural truths rest must be convincingly developed. Third, and finally, the arrangement of the whole system must be carried out, even in its individual parts, according to the principles of its internal essential connection and not in accordance with an arbitrary scheme. The essential character of the system consists in the union of these three qualities: Completeness, depth or fundamentalness and order.” (Outlines of Juris., Hastie, p. 161.)

“JURISPRUDENCE,” says Puchta, “is scientific knowledge of the system and history of right. The science of right (law) has, therefore, two sides, the one systematical (we would say analytical) and the other historical; and in the proportional combination of them, the true method of Jurisprudence consists. But this does not exclude the condition that a scientific investigation and exposition of right in some particular relation may proceed preëminently by the one method rather than by the other. It is not a one-sided method of procedure to give prominence to one side of the whole subject; but the jurist is to be called one-sided when he deals with one side of his subject as if it were the whole of it. The systematical knowledge of right is the scientific knowledge of the inner connection which unites its parts together. The individual part is thus apprehended as a member of the whole, and the whole system is viewed as a body that unfolds itself in particular organs. . . . It is only the systematic knowledge of the right that can be regarded as a complete knowledge of it. . . . Were we to regard the science of right as a mere aggregate of jural propositions we would never be certain that we had made it our own in its whole extent; just as a part of a heap of stones may be wanting without the spectator becoming aware of the defect, whereas, when they are built into a work of art, a single stone cannot be wanting without the blank becoming manifest. And so it is, conversely, in reference to the precise determination of the outline of the whole.” (Outlines of Juris., Hastie, p. 124.)

Professor Hastie, who translates a considerable portion of of the writings of the modern German jurists for use in the universities of Great Britain, after explaining the relative fields occupied by the great German jurists, Savigny and Puchta, as representatives of the historical school, and Falck and Friedlander, as exponents of the analytical or systematic school of exposition, says :

“These elements, notwithstanding their different origin, constitute a unity in virtue of their relation to the unity of the science. It is their treatment from different points of view of that unity which forms the characteristic method of this little book. That method is briefly the representation of all the rational elements in the science as constituting one systematic whole. Such a method, if legitimately carried out and successfully realized, is not only a convenient guide to the synoptic arrangement and study of the science, but the principal means of giving prominence and certainty to its constituent truths. If the relations of its parts are shown to be real, and are realized in their interconnection, every part of the science thus established will give cohesion and stability to every other part and to the whole. This is what the Germans mean by encyclopædia as a method of science, and even as the highest culminating method of reason, in its ultimate determination of truth. It is this idea which, in its varied application to the different departments and details of empirical knowledge, has been gradually making all knowledge systematic and uniting it into an organic whole. The conception practically evolved and applied in England by Bacon and later thinkers, has been more methodically dealt with in Germany by her recent masters of thought, and more formally applied by workers in detail to their special sciences. The encyclopædic method has thus been systematically applied by the German jurists to their proper science, and much of their success as comprehensive and original thinkers and investigators has been due to it. In view of that success, and especially of the degree in which they have thus been guarded against one-sidedness and the aberrations of a partial method, it seems more than time that both the name and the reality of juristic encyclopædia should be introduced into England.

“*Juristic encyclopædia* is not only the proper scientific form of introduction to the science of Jurisprudence generally,

but it is also the appropriate disciplinary preparation for the systematic study of positive law. It stands to it in a relation analogous to that of mathematics to the physical sciences, or of grammar to the details of the several languages. It may thus be said to exhibit the definitions, axioms and forms of proof, or the elements, rules and relations involved in all legal systems. The urgency of its requisiteness and the degree of its availability will depend upon the character and constituents of the particular system under consideration. But it is universally felt and acknowledged that there is no system in relation to which the student so much requires the help and guidance of introductory discipline and conscious method as that of English law. 'English law,' says Mr. Frederic Harrison, 'is, of all the systems of law, that one which most requires a scientific introduction by a training in principles.' Mr. Austin has also well said: 'To the student who begins the study of the English law, without some previous knowledge of the *rationale* of law in general, it naturally appears an assemblage of arbitrary and unconnected rules. But if he approaches it with a well-grounded knowledge of the general principles of Jurisprudence, and with the map of a body of law distinctly impressed upon his mind, he might obtain a clear conception of it as a system or organic whole with comparative ease and rapidity.' In like manner, Mr. Phillips, in his able and independent discussion of Jurisprudence, says: 'I firmly believe that the intolerable aridity usually attributed to legal study is entirely due to the infatuation with which the student usually persists in exploring the details of his science before he comprehends its outlines. What every jurist has first to do is to make himself master, not of the law itself, which may be pernicious and must be imperfect, *but of that great system of jural problems which forms the framework of all law, and which, as it arises out of the conditions of human existence, must retain its importance while the human race survives.*'" (Outlines of Juris., Hastie's Pref. XXXII.)

THE CONDITION OF AMERICAN JURISPRUDENCE.

The most striking feature, in view of the fact that we have a common federal Jurisprudence and a common underlying system of common law, is the great diversity which exists in the

schemes of legal education presented at our larger and more important colleges. That there should be a diversity in methods of study and teaching is but natural; but that there is no common system of education indicates an absence of any common conception of the *corpus juris*. It is to be hoped that the Section of Legal Education will correct this fault.

Since Walker's "American Law" appeared in 1837, the tendency has been to drift away from the idea of a common system constituting one integral *corpus juris*.

The condition in America cannot better be stated than by adopting the language of Montague Crackanthorpe, of the English Bar, spoken in this place eight years ago, as to the condition in England:

"The condition of our legal education being what I have described, it is not surprising that English lawyers, bred like myself amid the turmoil of the courts, should be reproached by *Continental observers* with knowing little about the science of law, or the relation which the English system of Jurisprudence bears either to those that have preceded it, or to those that now prevail in other parts of the civilized globe. England, we are told, produces many first-rate advocates, occasionally very great judges, but rarely a scientific or a comparative jurist. The imputation is, I am bound to admit, not wholly unfounded. With some of our judges and practitioners the very word 'jurist' is in bad odor. 'I will tell you what a jurist means,' said, not long ago, a distinguished member of our bench, prematurely, alas, taken away from our midst, 'A jurist is a man who knows a little of the law of every land except his own.' That the saying should have survived is *prima facie* evidence that our Continental critics are right. It survived because it was thought to be witty, and there can be no real wit without a grain of truth, or at least what is deemed to be truth by those who regard it as wit.

"So long as legal principles lie embedded in masses of reported cases, not always to be reconciled with one another, it is hopeless to expect that English law can be looked upon, from the scientific point of view, by those who pursue it professionally. A collector of herbs is not a true botanist, skilled though he may be in the knowledge of specific plants. Unless

he understands how to classify them, unless he can tell us something of their native habitats and their family relationships, he is a collector and nothing more. So of most of our practicing lawyers. They have at their fingers' ends a large number of authorities, which they manipulate, discuss and apply according to the exigencies of the hour; but case knowledge is not scientific knowledge, any more than the particular is the general.

"As is the common run of legal practitioners, so is the common run of our legal text-books. We have in our libraries a number of monographs, dealing with the sub-heads of law in minute detail—books on Torts and Contracts, on Settlements and Wills, on Purchases and Sales, on Specific Performance, on Negotiable Instruments and so forth. We have also many valuable compendia, or institutional treatises, dealing with the law as a whole. Each and all of these bear witness to the disjointed character of our Jurisprudence. The numerous monographs overlap and jostle each other like rudderless boats tossing at random on the surface of a wind-swept lake. The institutional treatises, in their endeavor to be exhaustive, fail in point of logical arrangement, as vessels overladen with a mixed cargo fail to get it properly stowed away in the hold. Some day, perhaps, we shall produce a *corpus juris* which will reduce this legal wilderness to order. But if we would lay bare the living forest, we must first grub up the decayed trees."

The illogical condition and the benefits likely to arise by classification were well put, over thirty years ago, by Mr. Justice Oliver Wendell Holmes, in discussing some of the advantages of classification.

"We are inclined to believe that the most considerable advantage which might be reaped from a code is this: that being executed at the expense of government and not at the risk of the writer, and the whole work being under the control of one head, it will make a philosophically arranged *corpus juris* possible. *If such a code were achieved, its component treatises would not have to be loaded with matter belonging elsewhere, as is necessarily the case with text-books written to sell.* Take up a book on sales, or one on bills and notes, or a more general treatise on contracts, or one on the domestic relations, or one on real property, and in each you find

chapters devoted to the discussion of the incapacities of infants and married women. A code would treat the subject once and in the right place. Even this argument does not go much further than to show the advantage of a connected publication of the whole body of the law. But the task, if executed *in extenso*, is, perhaps, beyond the powers of one man, and if more than one were employed upon it, the proper subordination would be more likely to be secured in a government work. We are speaking now of more serious labors than the little rudimentary text-books in short sentences, which their authors, by a happy artifice, have called codes instead of manuals. Indeed, we are not aware that any of the existing attempts are remarkable for arrangement. The importance of it, if it could be obtained, cannot be overrated. In the first place it points out at once the leading analogy between groups. . . . A well arranged body of the law would not only train the mind of the student to a sound legal habit of thought, but would remove obstacles from his path which he now only overcomes after years of experience and reflection. . . .

“From what point of view the several topics should be treated in detail is a mere question of convenience. Hence, although the general arrangement should be philosophical, even at the expense of disturbing prejudices, compromises with practical convenience are highly proper. There are certain legal units which must be preserved although they lie on both sides of a great natural dividing line, *e. g.*, contract. Some subjects have acquired a unity in practice that it might be unprofitable to analyze, *e. g.*, dominion or ownership. Other conceptions again, although complex, if we break them up into the ideas out of which modern law is built, lie, historically speaking, at its foundation, and have acquired cohesion from their very antiquity. *e. g.*, parts of the *jus personarum*.” (Am. Law Rev., Vol. V [1870].)

Our distinguished guest, Mr. Chalmers, many years ago pointed out the necessary connection of the parts with the whole. In the prefatory words of his Sale of Goods Act, he says :

“The Bill is almost entirely a reproduction of common law. With the exception of the Statute of Frauds, the legislative enactments relating to the sale of goods deal only with isolated

points of not much general importance. In so far as such enactments deal solely with the law of sale, they have been reproduced in the Bill; but where they relate mainly to some different subject matter, and deal only incidentally with the law of sale, or where they affect only certain specified classes of goods, they have been covered by saving clauses. If the whole law of contract was codified, the present Bill would form a single chapter in the Code. In accordance with this principle, no attempt is made to reproduce the effect of cases which, though arising out of sales, merely illustrate principles common to the whole law of simple contracts. A similar course was observed with regard to the Bills of Exchange Act" (Chalmers, Sale of Goods, p. iv).

WHAT IS LAW?

It seems obvious that the fundamental inquiry preceding all attempts at comprehension or classification must be, What is the law? Because the initial inquiry must ever be as to the nature of law and right.

Mr. Carter says: "There is one branch of legal study quite essential, as I think, in the making of a thorough lawyer, to which, I fear, sufficient importance is not attached in the schools, and concerning which no little misapprehension exists. I mean the elementary inquiry, what law really is, and the sources from which it proceeds. The mind so constantly views it as something to be obeyed, that it is naturally taken to be a *command*, or a body of commands, proceeding from the supreme power in a state; and such it has been defined to be by the highest authorities, among them Blackstone and Austin.

"I have long thought this to be a serious error. It might, indeed, be admitted to be true in respect to statutory law; but this constitutes an extremely small part of the body of our Jurisprudence. *The bulk of our law is composed of those unwritten precepts and rules which are recognized and enforced as law by the judicial tribunals, irrespective of any legislative sanction.*" (Hints to Young Lawyers, Address, Columbian Univ., June 12, 1894.)

The law is something more than the mere formal rules which have been declared in constitutions and statutes and applied in precedents.

What other elements then go to make up the body of American law, the real *corpus juris*?

As, in many other things, the impalpable, imperceptible elements are the most permanent and the most powerful. In physics the most powerful static force cannot be seen. So it is with the law. The real social force is made up of the principles of the social organism; the expressed laws are but rules of operation. All will agree that written law is the least in volume and scope.

Thus, Mr. Carter says:

“It is scarcely an exaggeration to say that nearly the whole of that body of law which really prescribes rules of civil conduct, which is stamped with the moral quality of justice, and which governs the private transactions of men with each other, is substantially untouched by the statute book.” (“Written and Unwritten Law,” Va. Bar Assn., 1889.)

The unwritten body of law embraces every field and pervades every subject. It is made up of the principles and governs the interpretation and application of written rules. These principles give spiritual life to and control the operation and application of the rules quite as much as do the soul and nerves move and control the movements of the human anatomy. In truth, a government of laws such as we have finds the real sovereignty in what is termed the moral character of the body politic.

Lord Mansfield says, in *Fisher vs. Prince* (3 Burr. 152):

“The reason and spirit of cases make law; not the letter of particular precedents.”

And in *Norris vs. Tyler*, Cowp. 37, he says:

“But it is argued, and rightly, that notwithstanding it is not prohibited by any positive law, nor adjudged illegal by any precedents, yet it may be decided to be so upon principles; and the law of England would be a strange science indeed if it were decided upon precedents only. Precedents serve to

illustrate principles, and to give them a fixed certainty. But the law of England is exclusive of positive law, enacted by statute, depends upon principles, and these principles run through all the cases according as the particular circumstances of each have been found to fall within the one or other of them."

A beautiful illustration of this is found in *B. & O. Ry. Co. vs. Baugh*, 149 U. S. 368, where the question arose as to the liability of a corporation for an injury to a servant, and it was urged upon the court that the decisions of the state courts as to the local law of the state where the transaction occurred should be followed by the federal court.

Mr. Justice Brewer said :

" But passing beyond the matter of authorities, the question is essentially one of general law. It does not depend on any statute ; it does not spring from any general usage or custom ; there is in it no rule of property, but it rests on those considerations of right and justice which have been gathered into the great body of the rules and principles known as the ' common law.' "

Mr. Leonard A. Jones, in the address before referred to, has very happily stated the position which we desire to emphasize, when he says :

" The common law constitutes the great body of our law. Whence comes the common law ? Coke says that ' the common law itself is nothing else but reason.' He also says, ' that the common law of England is sometimes called *right*, sometimes common right, sometimes *communis justitia*. In the Great Charter the common law is called *right*.' Again he says, ' The law of nature is part of the law of England.' Lord Mansfield says that the law is nothing else but reason modified by habit and authority. . . .

" I have been led to believe in and to advocate a modified form of codification because, it seems to me, to be the only way in which the law in essential matters can be brought into substantial unity throughout the country, and in all courts,

federal and state.¹ I say a modified system of codification, because a complete codification of all law, such as Bentham dreamed of, is impracticable. If it were possible to make such a complete code, it would not retain its completeness beyond the day of its enactment. The courts must necessarily interpret it, and their interpretation must be upon *common law principles*, and thus the complete code becomes incomplete and common law once more a part of the laws of the land. The codification that I believe in is one that will still leave very much to the common law to be declared by the courts. *It is a code of principles and general rules, and not one of particulars* applicable to all the minute details of daily transactions, countless in number and variation. I am glad to follow that distinguished jurist, Judge Dillon, in his views of what a code should be. He says: ‘There are, I think, few advocates of codification who share in Bentham’s extreme views; but there are many who believe, myself among them, that a far less radical scheme—one more suited “to human nature’s daily food”—is not only feasible but desirable, namely: a thorough revision and systematic statement by experienced and master hands, not of the whole law, but as far as it can be expediently done, of the laws on the great subjects which relate to the ordinary business and life of the people; deducing and stating what is clear; removing what is archaic and obsolete; settling what is doubtful or obscure; never losing sight of the old landmarks, sailing ever close to the shore; using, whenever they will best answer the purpose, old conceptions, language and methods of classification, and making no changes except where it is demonstrably clear that change is improvement. Codification (if this is codification), within these conservative limits, has many advocates in England and in this country among lawyers and judges of ability and wide experience.’ . . . The ablest advocates of the codification of the substantive law no longer believe that there can be a code which will supersede wholly, or even in large part, the administration of the law by the courts upon common law principles. The degree to which codification can be carried is a practical question to be decided by reason and experience.”

¹ Is not the consciousness of the real unity which now exists the first step, and the acceptance of a statement of it which displays this unity the next? Must this be a code? May it not be a treatise?

THE PERMANENCY OF THE BODY OF PRINCIPLES, THE MUTABILITY OF RULES.

One of Wendell Phillip's epigrams was this : " Natures live, growths crowd out and rive dead matter. Ideas strangle statutes."

Lord Coke says, " The principles of natural rights are perfect and immutable, but the condition of human law is ever changing, and there is nothing in it which can stand forever. Human laws are born, live and die."

On the other hand, the history of the interpretation of the *post bellum* amendments shows how the principles and policies enlarge and extend the application of written laws. The argument that the framers of the Constitution never dreamed of a proposed application no longer has weight.

James Wilson makes the idea of the permanency of the principles and the mutability of the rules quite clear where he says :

" We have mentioned the common law as a law which is unwritten. When we assign to it this character, we mean not that it is merely oral and transmitted from age to age merely by tradition. It has its monuments in writing ; and its written monuments are accurate and authentic. But though, in many cases, its *evidence* rests, yet in all cases, its *authority* rests not, on those written monuments. Its authority rests on reception, approbation, custom long established. The same principles which establish it, change, enlarge, improve and repeal it. These operations, however, are, for the most part, gradual and imperceptible, partial and successive in a long tract of time.

" It is the characteristic of a system of common law that it be accommodated to the circumstances, the exigencies and the conveniences of the people by whom it is appointed. Now as these circumstances, and exigencies, and conveniences insensibly change, a proportioned change, in time and in degree, must take place in the accommodated system. *But though the system suffer these partial and successive alterations, yet it continues materially and substantially the same.* The ship of the Argonauts became not another vessel, though almost every

part of her materials had been altered during the course of her voyage. (1 Wilson's Wks. 453.)

The application of these principles in specific rules is ever changing, but the essential anatomy does not change, the body of operative rules always remains attendant upon and fixed to this underlying anatomy just as the muscles lie on the bones of the skeleton. The integrity of the skeleton does not change; but precisely as the aspect and condition of the material body changes by the atrophy or development of the muscles, they still remain members of the same body; they occupy the same relative situation; they perform the same function in reference to the same object. And so of the rules of law. They occupy the same relation to each other. They have the function of saying this may be done and that may not be done. Full liberty may be given to dispose of real estate during life and to direct its disposition for a life or lives in being and twenty-one years thereafter. Permission may be given to create a spendthrift trust. The underlying principle of governmental control and public policy which enables the state to control and the court to govern the extent of control is not changed by changing the terms of these rules in compliance with a change in policy and limiting the disposition of estates for the period of two lives, or to prohibit the creation of spendthrift trusts. The principle and the subject-matter of the rule is the same however the rule is stated. Its relation to other rules is the same—the mutation of the rule itself does not affect the integrity of the system.

It will be remarked that all these opinions agree in the idea that the main body of our law consists in the principles, and, while several of them mentioned it in connection with the subject of codification, it is desirable to make, in this connection, the distinction between a codification of the written law and a classification of the principles and the principal known rules of the law.

In ordinary codification the principles remain untouched—they are presumed to exist and underlie the code, and to be

known, while in legal classification the statement of the leading principals, applicable to every department of law of necessity constitutes the chief end and aim. It displays the law, its nature, departments, elemental principles and affixes to these the rules which now obtain. The system is permanent, the rules variable.

It is of such a work that Mr. Carter says:

"A statement of the whole body of the law in scientific language, and in a concise and systematic form, is precisely what is understood by a good Digest; and such a work, at once full, precise and correct, would be of priceless value. It would not indeed supersede special treatises upon the different branches of the law, or the books of reports; but it would, by facilitating, *save* labor. It would refresh the failing memory, reproduce in the mind its forgotten acquisitions, exhibit the body of the law so as to enable a view to be had of the whole, and of the relation of the several parts, and tend to establish and make familiar a uniform nomenclature. Such a work, well executed, would be the *vade mecum* of every lawyer and every judge. It would be the one indispensable tool of his art. Fortune and fame sufficient to satisfy any measure of avarice or ambition would be the sure reward of the man, or the men, who should succeed in conferring such a boon. It would not indeed be suitable to be *enacted* into law, for even *it* would wholly fail were its rules made rigidly operative upon future cases; but statutory enactment, while it would convert it into an instrumentality for mischief, would not, in any degree, be necessary to its real value. It could proudly dispense with any legislative sanction. Let those, therefore, who think that what is known of the whole body of the law may and should be arranged in a concise, orderly and systematic form, direct their efforts to the accomplishment of this great work." ("Provinces of the Written and the Unwritten Law," Va. Bar Assn., 1889.)

An impression prevails in certain portions of our professional life that we have drifted away from the necessity of such a treatise as Blackstone, Wood and Kent. Perhaps the mania for codification which prevailed so long has something to do with it; perhaps the reason rests in the failure to comprehend

the real meaning of Jurisprudence and law; but once the true comprehension of the *corpus juris*, its invisible principles as well as the visible parts is obtained, we may readily understand why such great jurists as Mansfield and Marshall and Wilson Story, held in such high esteem and veneration the Institutional Treatises, such as Gaius, Justinian, Finch, Hale, Wood, Blackstone and our own Kent. After all they were in their day the oracles of the law, they moulded the decrees which became precedents.

More and more is it remarked by great lawyers that in the maze of precedents we are in danger of losing sight of the principles. This admonition carries with it the idea that the real substantial law is found in the principles, and to reduce these to their relative order and to show their mutual affinity, interdependence and application is the most valuable work yet to be done in any time. Once done scientifically and acceptably, it will not need doing over until fundamental changes are made in the system.

THE SUBJECT TO BE CLASSIFIED—LAW.

In discussing the various plans of classification it is essential that we have in view three postulates, namely, the same starting point, the same goal, different routes; and the necessity arises of itself of studying and comparing the different routes.

We must agree upon, or by some process of reasoning, reach a common understanding of the things to be classified.

The goal, or resultant, hoped for is plain; that is, a complete exposition of our system of law. The different forms of classification are the different routes of reaching this goal.

The second postulate is the matter under discussion, and must remain uncertain until the conclusion of the problem is reached. There cannot be two uncertain points. We must assume or prove that that which is to be analyzed and exhibited is the law, the *corpus juris*, not rights and duties, nor rights and obligations; these fall within and are but parts of the

greater whole. The first great postulate must be the broadest of all and embrace everything—the law—there is nothing broader.

Falck, the German jurist, states the position thus:

“A scientific division of Jurisprudence must, however, be determined by regard to the principal conceptions of the system, and not by reference to merely accidental circumstances, nor to the convenience of academical lectures, nor to the particular objects of certain writers, nor even to the way in which the Romans or the modern nations have arranged their systems. The conception of individual right has been usually taken as the principle of a scientific division of the subject. But as this conception is correlative to that of obligation, this mode of division might just as well proceed from the idea of obligation as from that of right. In order to avoid this arbitrariness, it thus becomes necessary to put the higher *conception of law*, which includes *both these conceptions*,¹ at the head of the science.” (Outlines of Juris., Hastie, p. 201.)

SCHEMES OF CLASSIFICATION.

We start with an attempt to classify our laws, but immediately find a few individuals of such standing as to entitle their suggestions to considerations, who suggest that we make two bodies, one relating to duties, the other to rights.

¹ The confusion in the use of this word Right is apt to prove a stumbling block. It is frequently used by Continental jurists as the equivalent of law, and it was so used by early English jurists at just that period when they were translating the expression from Latin into English. This clearly appears from the quotation above made from the address of Mr. Jones, where he says: “Coke says that ‘the common law itself is nothing else but reason.’ He also says, ‘that the common law of England is sometimes called right, sometimes common right, and in the Great Charter is called Right.’” So also Grotius, in his “*De Jure Belli ac Pacis*” (p. 20), says: “There is also a third signification of the word right, which has the same meaning as law, taken in its most extensive sense, to denote a rule of moral action *obliging us* to do what is proper. *We say obliging us*. For the best counsels or precepts, if they lay us under no obligation to obey them, cannot come under the denomination of law and right.” See also *Miller vs. Taylor*, 4 Burr. 2343–4.

Now, to proceed directly to the conclusion, is it not clear that duties are what is owing to others; rights are what is possessed, or may be required from others; and is it not plain that these are but correlatives each of the other; that the statement of one involves a statement of the other; and that such a division would result simply in a double statement, once from the standpoint of rights, once from the standpoint of duties. The theory has never been applied. It would be a bold innovation to adopt a scheme which has never appeared in any form more substantial than the abstract and metaphysical and to abandon the plan based on the traditions of centuries.

It is commonly stated that Blackstone in his arrangement of the law followed Hale, and this is true, excepting in the introduction of the primary classification, rights and wrongs. How he arrived at this is well understood by those who have given this subject any considerable study.

He framed a definition of law, and, adding to it the phrase, "*Commanding what is right and prohibiting what is wrong,*" from this premise deduced the conclusion that it appearing then that the *objects* of the *laws* of England *are rights and wrongs*, his commentaries should be divided into these two parts.

Scholars also know that this additional phrase had no logical basis, that is, that law does not necessarily command what is right and prohibit what is wrong, and it has been pointed out that the process of reasoning which stated that because law prohibited what was wrong and commanded what was right, it follows that the objects of the laws of England were rights and wrongs, involved a juggling with words, the "right" and "wrong" in the definition being used in the adjective sense, and "rights" and "wrongs" for the purpose of classification being substantives.

It has been pointed out by Dr. Hammond that even this did not disturb the essential integrity of Blackstone's scheme and that his treatment is in actual conformity with Hale, for the reason that in Book I, he treats Public Persons and

Private Persons ; Book II, Things ; Book III, Actions ; Book IV, Public Wrongs.

Thus his treatment in fact preserves the traditional scheme of the civilians, originating with Gaius, perpetuated by Justinian, commended by Finch, Hale and Wood and introduced into our own Jurisprudence, quite clearly, by Wilson, applied imperfectly by Kent, and again more perfectly by Walker. Is not this the best method, as adapted to our law ?

THE PRINCIPLE OF CLASSIFICATION.

In prosecuting the work of legal classification, it is necessary to arrive at a common point of view and to adopt some fixed logical principle and to adhere to these, that is to say, you cannot for a part of the way proceed as though you were analyzing rights and duties and then shift over for another part of the way and analyze laws.

You cannot for a time proceed upon the idea of public law and private law and then adopt the idea of adjective and substantive law, and also apply the rule that law has for its objects, persons, things and actions.

The relative merits of the different points of view and the different principles must be considered and that one adopted which seems the best suited to our Jurisprudence and to the particular object of the classification in hand.

This does not imply that the one chosen is the only one which might be used, but only that, all things considered, it is the best adapted to the purpose.

Herein lies the chief difficulty. It may be that for certain practical purposes one classification presents advantages over another, while for other purposes a different outline seems best.

To illustrate, let us assume that a commission formulating a code sees that for the purpose of codification a primary division into public and private law accommodates the subject of statutory law very well, or that it may be divided into the political code, civil code, code of procedure, etc.

It is quite possible that the same commission would determine that for the purposes of a broad and complete text presentation of the whole legal system, a primary classification into the law of persons, the law of things and the law of actions would be better.

Other schemes might find advocates, and it might be found that any one of several would, in a manner, lend itself to the object.

The commission or individual having the matter in hand would then have presented the question as to whether there was not one of them which, for all practical purposes, could be advantageously used for every purpose for which classification was needed. It can readily be seen that it is highly desirable if a classification can be found of such a nature as will accommodate itself to a presentation of the whole body of principles and rules which make up the *corpus juris*, including unwritten and written law, constitutional and statutory, and will also be well adapted to the arrangement of a Digest, for the reason that if such a scheme could be devised and generally accepted, the student of the law, the teacher, the judge and practitioner, would be always dealing with the identical material and regarding it from precisely the same point of view, but using it for different purposes. It is a misapprehension to suppose that a really high-class elementary treatise which gives the principles, the main body of rules, and is supported by a full citation of the best selected cases is not a practical book for practicing lawyers. It is in truth his most practical book—all others are auxiliary.

LOGICAL RULES OF CLASSIFICATION.

“The rules for the logical division of a subject, according to Archbishop Whately (Logic, p. 93), are three:

“1. Each of the parts, or any of them short of all, must contain less, *i. e.*, have a narrower signification, than the thing divided.

“2. All the parts together must be exactly equal to the thing divided; therefore we must be careful to ascertain that

the *summum genus* may be predicated of every term placed under it, and of nothing else.

“3. The parts or members must be opposed, *i. e.*, must not be contained in one another, *e. g.*, if you were to divide the word ‘book’ into poetical, historical, folio, quarto, French, Latin, etc., the members would be contained in each other; for a French book may be a quarto or octavo, and a quarto, French or English, etc. ‘Therefore,’ continues the Archbishop, ‘*you must be careful to keep in mind the principle of division with which you set out, e. g.*, whether you begin dividing books according to their matter, their language, or their size, all these being so many cross divisions. And when anything is capable, as in the above instance, of being divided in several different ways, we are not to reckon one of these as the true, or real, or right one, without specifying *what the object* is which we have in view; for one mode of dividing may be the most suitable for one purpose, as, *e. g.*, one of the above modes of dividing books would be the most suitable to a bookbinder, another in a philosophical, and the other in a philological view. . . . When you have occasion to divide anything in several different ways—that is, on several principles of division—you should take care to state distinctly how many principles of division you are making, and on what principle each proceeds.’

“Proceeding upon these rules, which are as old as Aristotle, though perhaps nowhere so clearly enunciated as in the treatise to which we have referred, it is easy to see that there are different ways or principles of division according to which the subject of law may be divided or classified. . . .

“Every distinct arrangement which brings into view a separate combination of rights bound together by a common principle, and governed by the law of analogy, forms in reality an integral part of the subject considered systematically; and the omission to deal with an important class of rights under any of the recognized principles of division indicates as truly a want of completeness in the work, and may tend as much to obscure the reader’s perception of the relations of legal rights, as the entire omission to deal with the right in question in the treatise.” “Sketch of a Scientific Classification of Rights.” *Journal of Juris.*, Edinburgh, 1864.

The primary classification, which seems to have had the most extensive application, was first reduced to a formula by

Gaius. It is expressed in his Institutes. He treats the subject under the title-head, "The Divisions of the Law," not the division of *rights*, his expression in Latin being, "*Omne autem jus quo utimur vel ad personas pertinet vel ad res vel ad actiones*," which is translated by Sanders, "all our law (not rights) relates either to persons, to things, or to actions."¹

The fundamental principle of this classification is that the principal object (or, to state the same thing in a different way, the principal subject), of the rule shall determine its place in the scheme of analysis.

Does the principal object of a rule under consideration depend upon status? If so, the rule falls under the general head of persons.

What is the character of the status? Does it relate to official capacity or private, domestic capacity? If the former, it falls under the law of public persons; if in the latter, under the law of private persons.

When the principle is appreciated and the words used in expressing the rule are all well understood according to the technical meaning of the words, there is no rule of law, written or unwritten, which does not accommodate itself readily to the scheme.

There is no precedent or decision applying it which cannot, without any uncertainty, be assigned to its proper place. True, the same decision may and generally does involve several rules falling under several branches of the law, but this creates no embarrassment. The principle is adopted by Hale, Blackstone and Wilson. That to which the law relates becomes the touchstone of classification.

This is the principle applied by French civilians, and is thus stated by Judge Story:

"In their discussions upon this subject the civilians have divided statutes (laws) into three classes, personal, real and mixed. *By statutes*, they mean, not the positive legislation which in England and America is known by the same name,

¹ Gaius 1-8, Institutes 1-3, Sandar's Ed.

viz., the acts of Parliament and of other legislative bodies, as contradistinguished from the common law; but the whole municipal law of the particular state, from whatever source arising. Sometimes the word is used by them in contradistinction to the imperial Roman law, which they are accustomed to style by way of eminence the common law, since it constitutes the general basis of the Jurisprudence of all continental Europe, modified and restrained by local customs and usages, and positive legislation.

“Merlin says ‘that this term, statute, is generally applied to all sorts of laws and regulations. Every provision of law is a statute which permits, ordains or prohibits anything.’ *Ce terme (statut) s’applique en général à toutes sortes de lois et de réglemens. Chaque disposition d’une loi est un statut, qui permet, ordonne, ou déjend quelque chose.*’

“The civilians have variously defined the different classes of statutes or laws. The definitions of Merlin are sufficiently clear and explicit for all the purposes of the present work, and will therefore be here cited. The distinctions between the different classes are very important to be observed in consulting the foreign jurists, since they have been adopted from a very early period, and pervade all their discussions. *Personal statutes* (laws) are held by them to be of general obligation and force everywhere; and *real statutes* (laws) to have no extra-territorial force or obligation. ‘Personal statutes,’ says Merlin, ‘are those which have principally for their *object* the *person*, and treat only of property (*biens*) incidentally (*accessoirement*); such are those which regard birth, legitimacy, freedom, the right of instituting suits, majority, as to age, incapacity to contract, to make a will, to plead in proper person, etc., (*i. e.*, status capacity, or the law of persons). *Real statutes* are those which have principally for their object property (*biens*), and which do not speak of persons except in relation to property; such are those which concern the disposition which one may make of his property, either alive or by testament. *Mixed statutes* are those which concern at once persons and property. But Merlin adds, ‘that in this sense almost all statutes are mixed, there being scarcely any law relative to persons which does not at the same time relate to things.’ He, therefore, deems the last classification unnecessary, and holds THAT EVERY STATUTE (rule of law) OUGHT TO RECEIVE ITS DENOMINATION ACCORDING TO ITS PRINCIPAL

OBJECT. As that is real, or personal, so ought the quality of the statute to be determined. But this distribution into three classes is usually adopted precisely as it is stated by Rodenburg. *Aut enim statutum simpliciter disponit de personis, aut solummodo de rebus, aut conjunctim de utrisque.*" (Story's Conflict of Laws, p. 10.)

Judge Story proceeds :

"If, in referring to the authority of the civilians, I should speak of the personality of laws (*personnalité des statuts*) and the reality of laws (*réalité des statuts*), let it not be attributed to a spirit of innovation upon the received usages of language, but rather to a desire to familiarize expressions which, in this peculiar sense, have already found their way into our juridical discussions and are becoming daily more and more important to be understood by American lawyers since they are incorporated into the very substance of the Jurisprudence of some of the states of the Union. *By the personality of laws, foreign jurists generally mean all laws which concern the CONDITION, state and capacity of persons ; by the reality of laws, all laws which concern property or things ; quae ad rem spectant.* Whenever they wish to express that the operation of a law is universal, they compendiously announce that it is a personal statute ; and whenever, on the other hand, they wish to express that its operation is confined to the country of its origin, they simply declare it to be real." (Story's Conflict of Laws, p. 18.)

The classification is one of such universal application that there is no system of laws among any civilized people to which it is inapplicable.

When the leading terms, *persons, things and actions*, are understood and exhibited in their technical sense, this becomes apparent. It is easy to perceive that in every body of law, there will be a branch of laws fixing the status and governing personal relations, both public and private ; another branch, which has for its principal object the regulation of ownership and transfer of property,—the law of protection or redress,—with the assistance and umpirage of the state, under whatever name it may be called (whether law of action, procedure or

remedies), which, nevertheless, while interdependent, is sufficiently distinct to be treated as a distinct branch. This classification has the merit of having been successfully applied to English and American Jurisprudence and is, therefore, associated with the traditions of the profession.

In discarding the principle of classification which has regard to the form or source of the law, it is reasoned that that which may be termed its source does not have any connection with the subject to which the given rule of law may relate. Public law, so-called, as well as private law, relates to persons, things and actions.

Merely because a rule is found in the Constitution or in a statute, or is evidenced by a custom, which is proven by some precedent, is immaterial. The natural and practical inquiry, whether one is studying or practicing, is what is the law upon a given point, not what is customary in such a case, but what is the rule to be deduced from all these.

When we consider how frequently constitutional enactments embrace subjects which would not, by close adherence to the nature of subjects, be regarded as proper subjects for constitutional legislation, the uncertainty of the classification becomes more apparent.¹ The theory would be well enough if the public would conform to it, but the practical is a condition

¹ "Another universal difficulty in all codification belongs to that part of the subject which deals with what is sometimes called 'Constitutional,' and sometime (still more loosely), 'Public' Law. This branch of the law may conveniently be called 'Laws directly relating to the Constitution and Administration of the State.' Part of the practical rules, sometimes called 'Constitutional' or 'Public' Law, can in no way, either by their mode of enactment, or by their mode of judicial interpretation and administration, be distinguished from the most familiar and essential parts of the general body of law. *Other parts* of these rules, again, are in no sense *true law* at present, though they may at some future time become so. To the latter class of rules belong most of the internal regulations of the two Houses of Parliament; the practice of abstinence, on the part of the House of Lords, from interfering with bills involving taxation; the practice of the Crown invariably assenting to bills passed by both Houses of Parliament; the rules regulating the privilege of access to the Sovereign; and the like." (Amos, "An English Code," p. 6.)

to which the theorists must conform. The mountain will not come to Mohammed.

The all-pervading reach of constitutional law in American Jurisprudence has destroyed entirely ancient and foreign ideas of what should be in a constitution.

Amos, in his "An English Code" (p. 8), says :

"A system of arrangement based on principles of pure logical science is essentially alien to a body of laws of independent and natural growth. This difficulty cannot be wisely met by simply sweeping away all that is national, and even grossly erratic, for the purpose of establishing in its place novel and exogenous principles of arrangement having no root in the popular, or even the professional, mind. . . .

The most desirable mode of solving this class of difficulties is to *construct the main skeleton of the code on the soundest and most irrefragable principles of logic*. As to the secondary and minuter divisions, logical considerations must only be allowed to lead the way so far as is consistent with not exposing the spirit and language of the national system of law to too severe a strain. To maintain the scientific integrity of the whole will constantly be found impossible ; and at frequently recurrent points the national must take precedence of the scientific. The codifier will exhibit his discretion and skill as much in deferring, when needful to *modes of classification*, of terminology, and of thought, embedded in the legal consciousness of the people, as in forcibly curbing worthless vagaries, and in maintaining, where possible, the undeviating persistency of his own plan."

THE ORIGIN OF AND REASONS FOR THE TWO CLASSIFICATIONS.

$$\text{LAW} \left\{ \begin{array}{l} \text{Public} \\ \text{Private} \end{array} \right. \qquad \text{LAW} \left\{ \begin{array}{l} \text{Persons} \\ \text{Things} \\ \text{Actions.} \end{array} \right.$$

An intelligent discussion of the relative logical merit and practical utility of these two seemingly rival schemes of classification involves a thorough understanding of the origin of each, the reasons upon which they are based and the use which has been made of them.

In this, as in many other matters of logical disputation, it will be found that the controversy is more often over names than ideas, and that, after all, when the dispute is resolved into its original elements, the disputants are not so antagonistic as at a casual glance might appear.

There are, however, substantial differences lying at the bottom of these two forms of primary classification.

It will be found upon investigation that the earliest expressions of each of these classifications is in the writing of the same persons in the same books and in connection with the same system of laws. This at once suggests that they may not be antagonistic ideas.

They are always mentioned in the writings of the Roman jurists, all of whom, however, adopt the classification of the law as it relates to persons, things and actions. It may be suggested in reply that this latter classification is made use of only with reference to the so-called private law, and, therefore, it might be argued that the primary classification was public and private law. But the reply is that the public law also relates to persons, things and actions.

That is, law is divided into public law and private law, and private law is divided according as it relates to persons, things and actions, and, it may be admitted, that in the ancient days, when the so-called public law was not in reality law, as we now understand it, such would have been a logical and, perhaps, a practical arrangement.

A mere translation of ancient expressions does not, in fact, aid us in the least. The danger in attempting to translate ancient nomenclature into a modern system and to apply it to existing institutions is always apparent.¹

¹ "Of old, if any one wanted to understand an ancient author, he 'translated' him; one word was exchanged for another, and the substitutes thus called in might get on together as best they could. This is what Voss did with Homer. But Moritz Haupe preached to his scholars, 'Don't translate,' and his pupil, Wilamowitz, has drawn up an able introduction to the reproduction of classic writers which amounts to the same thing. Its idea is as follows: that the 'centre' of the foreign work must be found and re-

In all such attempts at translating, or transplanting, resort must be had to reasoning by analogies, and, as is well understood, the process requires the closest scrutiny of every elemental part. Just as in chemistry the presence or absence of a single element may change the nature of the new compound, so, in this logical equation, the bringing in of a new element may destroy entirely old analogies.

An attempt will now be made to show there was originally a difference in the character of the so-called public law and private law; that in time a new characteristic element was introduced into the public law, and it thereby became precisely of the same nature as the private law. When this was accomplished, the reason for the ancient classification disappears.

That body of rules, which was anciently called public law, was of such a character as would not at the present day be called law. It is a subject but little discussed. In the olden times this body of public law consisted of the rules, if they could be called rules, which guided the monarch in his intercourse with his subjects, and they with him. The Prince was in fact the public, precisely as Parliament was, in Blackstone's theory, the body politic. All auxiliary governmental bodies were, in that early day, in theory but councils of the sovereign. "The State, It is I" expresses the extreme view.

The importance of making this distinction plain justifies confirmation of it in the opinions of others:

Heron says: "At first the right arising between subjects are determined and protected by the law while the sovereign remains above the law. Under barbaric despotisms the sovereign produced, and around this the whole work must crystalize in a new form, as if new-born. In just this way we are to-day 'translating' foreign works of plastic art or of history into terms of our intelligence. The 'method of mutual illumination,' as Scherer called it, is only one resource, but it is an indispensable one. It helps us to find the centre of phenomena that are foreign to us, and which lie wrapped in distant mist, by starting with those which we wholly comprehend."—*Richard M. Meyer, "German Criticism," Int. Monthly, May, 1901.*

reign acknowledges no legal rule binding upon him in his conduct towards his subjects.

“ But in time the relations between the government and the people become subjected to certain positive laws. And the body of laws determining the relations between individuals and their government is generally termed constitutional law, or political law—the latter term is preferable.” (Heron on Juris., p. 70.)

Bacon says: “ Concerning government, it is a part of knowledge, secret and retired, in both these respects in which things are deemed secret ; for some things are secret because they are hard to know, and some because they are not fit to utter.” (Bacon’s Wks., p. 238, “Advancement of Learning.”)

Judge Tucker truly remarked that in arbitrary governments, questions concerning the constitution rarely occur, and are still more rarely discussed, and hence, in such governments, the study of the law merely as a profession does not seem necessarily to require the study of the constitution ; the former being limited to such controversies between individuals as do not involve in them any question of the authority of the government itself, and the latter being supposed to be a theme too exalted for the comprehension of the private individual, and as such discouraged and neglected.

Blackstone, speaking of the theory of government, says :

“ The subject was ranked in the time of Elizabeth and James among the *Arcana Imperii*, and, like the mysteries of the *bona dea*, was not ever to be pried into by any but such as were initiated into its service ; because, perhaps, the exertion of the one, like the solemnities of the other, would not bear the inspection of a rational and sober inquiry.” (1 Blk. Com. 238.)

And he himself stated that the dignity and power of Parliament consisted in keeping indefinite its peculiar law, that is, the constitution of Parliament, a thing peculiar in itself and not subject to human laws.

Thus it is plain that the recognition of a body of law called public law which could be contrasted with another body

called private law, was originally based upon a substantial reason found in the difference in the nature of the law. Private law, was at that time, properly called the command of a superior. It emanated from a source different from those upon whom it operated, whereas the public law had originally no source excepting in the sovereign—it had no sanction excepting a moral and theoretical one. It was then an ordinance, an edict, a personal resolution.

Government was, under that theory, exercised as a matter of right. It was not merely official. It was rightful, proprietary, hereditary.

The main body of private law in the olden time consisted in the customs of the people, sanctioned and made efficacious through the medium of remedial procedure, so the most ancient maxims related to distributive justice.

The reciprocal obligation between the government and the governed rested upon the principles expressed in the ancient precept, '*protectio trahit subjectionem et subjectio protectionem*' (protection draws with it subjection, and subjection protection).

The transition from one form of government to another is a revolution. It always involves a change in the theory of right and law. The change from a monarchical to a popular form of government destroys entirely the theory of government that the rights of the people are grants from the Prince, and regards government as a delegation of power. All the ancient charters of liberty took the form of grants from the Prince to the subject. In American law there are no grants of rights or liberties. The people are the original proprietors and superiors and they never grant any part of the right—they delegate the exercise of authority and the recipient of the delegation in whatever form or character merely exercise official authority.

Modern law, especially American law, is a new conception, and is based upon the idea which was never before ap-

plied in any system of law, unless it was for a short time among the Greeks.¹

The great change is somewhat difficult to express, and has never been better expressed than in the constitution of Massachusetts, that "The end and aim was to establish a government of laws and not of men."

Under this new conception, all authority, all rights, all laws emanate from one source or fountain. They have one character, but they have different objects.

The principal aim of government is said to be the establishment and protection of private rights. There is in that sense no public right, but only public duty and public authority. There are property rights belonging to the public, but these are private in their nature.

Our constitutional law does not have its effect upon things public only but pervades and permeates every part of the whole system of laws affecting rights personal, rights of property and remedial law.

¹ "Edward Everett, in an address July 4, 1826, at Cambridge, states that 'till the establishment of the American Constitution this question (the basis of government) had received but one answer in the world. I mean but one which obtained for any length of time and among any numerous people, and that was force. . . .' Looking upon the Declaration of Independence as the one prominent event which is to represent the American system, and history will so look upon it, I deem it right in itself and seasonable this day to assert, that, while all other political revolutions, reforms and improvements have been, in various ways, of the nature of palliatives and alleviations of systems essentially and irremediably vicious, this alone is the great discovery in political science—the Newtonian theory of government—toward which the mind of all honest and sagacious statesmen in other times had strained but without success." (1 Wilson's Wks., Andrew's Edition, 1896, Int. p. 9.)

Wilson said: "The foundations of political truth have been laid but lately: the genuine science of government, to no human science inferior in importance, is, indeed, but in its infancy; and the reason of this can be easily assigned. In the whole annals of the transatlantic world, it will be difficult to point out a single instance of its legitimate institution: I will go further, and say, that, among all the political writers of the transatlantic world, it will be difficult to point out a single model of its unbiased theory." (1 Wilson's Wks., p. 23.)

We would be lacking in that keen perception of logic, which it is the effort of higher education to inculcate, did we not perceive that the fundamental changes in the nature of the material things with which we are dealing, are followed by a consequent and corresponding change in theories and forms of expression.

A classification which is based upon the subject-matter or object-matter will not segregate law into bodies relating to public law and private law.

A capital objection to the application of the theory consists in the fact that it separates and segregates rules relating to the same subject in violation of the logical principle of legal classification.

It will display the question in a clear light to reproduce the statements of modern writers on Jurisprudence as to the supposed distinction between public and private law.

In Holland's Jurisprudence, Chapter 9, the subject of which is "A Classification of Rights," the distinction is made between public and private law. It should be borne in mind that the subject of the chapter is the classification of *rights*, not classification of *laws*.

Dr. Holland says: "A very radical division of rights is based upon a broad distinction between the public or private character of the persons with whom the right is connected." (p. 111.)

Here the reason for the classification is not in the distinction between the rights nor the object of the law, but the difference between the persons who are involved. This violates all rules of dichotomy. (See Dr. Whateley's Rules.)

. Again: "When both of the persons with whom a right is connected are private persons, the right is private. When one of the persons is the state, while the other is a private person, the right is public."

"From this division of rights there results a division of law, as the definer and protector of rights, which when they subsist—

(1.) Between subject and subject, are regulated by 'private' law.

(2.) When between state and subject, by 'public' law.

"And this distribution of the whole field of law is of such capital importance that we have no hesitation in adopting the division of rights out of which it springs as the radical division of them." (p. 112.)

If the premises and the conclusion of this statement are subjected to critical examination it will be found that both are erroneous according to the principle of American law.

This author very well says: "By adopting the sub-division of municipal law, its whole field falls at once into two natural sections. On the one hand is the law which regulates rights where one of the persons concerned is 'public'; where the state is, directly or indirectly, one of the parties. *Here the very power which defines and protects the right is itself a party interested in or affected by the right.*" (p. 112.)

Such is never the case in the United States either theoretically or practically.

Professor Holland is looking at his subject from a point of view not applicable in America. His theories are alien.

Sir Frederick Pollock says truly: "The first right of every system is to be judged in its own field, by its own methods and its own work. It cannot be seen at its best, or even fairly, if its leading conceptions are forced in conformity with an alien method."

Let us turn to an American author, who approves the same classification, but gives other reasons. Pomeroy writes:

"Public law embraces those precepts (rules) which imposed duties and conferred rights upon the *political superiors* in the state supreme or subordinate, while the rules which control the *subject* members of the state (citizens) in their relation to the whole body ought, in strictness, to be ranged in private laws (Why, because one of the parties is private?), but as these relations are public in their nature, the rules themselves are

also considered as a part of the public law. Again, the private law includes rules which are definite rights, powers, capacities and incapacities of various classes of persons, private, domestic or professional, the rights of property, etc. Again, public law touches and affects the state in its organic unity."

What fault is to be found with these two statements? First, they do not agree with each other. Second, they do not invoke a principle of classification. Third, no such distinction as that suggested by Holland is recognized in our law, that is to say, it cannot be established as law when one of the persons engaged in a legal controversy is a state, or the nation, and the other a private person, the right involved is for that reason public.

It is not true that because the private right of an individual is assailed by the public the character of the right is changed. The law is directly the reverse and has been so declared on many occasions.

Equally fallacious is the proposition that when both of the persons with whom the right is connected are private persons, the right also is private. It falls before the judicial determination of the Slaughter House Cases, Granger Cases, and the cases under the Interstate Commerce Act, but the divergence between the practical truth and the theoretical imagination is made still more plain by the illustration of several rules limiting the right of private contract. For example, illegal contracts are those where, notwithstanding the wish and desire of the individuals to do or accomplish certain things, the public interdicts such things on the ground of public policy, limiting the power or capacity of individuals to contract upon that matter.

The rules in restraint of alienation and the rules against creating perpetuities are other illustrations. They are rules by which the transaction of private business, or the transfer of private rights between private individuals is interdicted by law. Those who would undertake to classify and arrange our law into two great bodies, called public and private law,

respectively, would be compelled to treat all such rules not with the subject of property and contract, but with public law. This would be a very novel arrangement, violating the traditions of our jurists.

Professor Pomeroy's classification is manifestly based on a false conception of law, that is, as emanating from a superior and operating between sovereign and subject. As has been pointed out the classification was rational under that theory.

Austin maintains that Lord Hale, and after him, Blackstone, acted wisely, both from a theoretical and practical point of view, in rejecting the primary classification of public and private law.¹

It might be wise to advocate the adoption of a new statement or arrangement and risk the temporary inconvenience of disturbing the traditional methods of arrangement, could it be

¹ Austin says: "In rejecting the division of the law into public and private, and in classing political with other conditions, Hale, I believe, is original and nearly singular. In an encyclopædia by Falck, a professor of law at Kiel, it is said that the authors of the Danish code, with those of the Danish writers who treat law systematically, observe, in this respect the arrangement observed by Hale. But in all the treatises by continental jurists which have fallen under my inspection, law is divided into public and private, *though the province of public law is variously determined and described.*" (Austin's Jur., Vol. I, p. 71.)

Again he says: "If, then, the law of political persons be opposed by the name of public law to the rest of the legal system, one of these absurdities inevitably ensues: either a bit of the *corpus juris* is opposed to the bulk or mass; or (to avoid that absurdity) the rest of the legal system must be appended to the public law; and public law, plus the rest of the legal system, must be opposed to that rest of the legal system from which public law is severed. . . . Agreeably to the view which I now have taken of the subject, Sir Matthew Hale, in his Analysis of the Law, and Sir William Blackstone, following Sir Matthew Hale, have placed the law of political persons (sovereign or subordinate) in the law of persons; instead of opposing it, as one great half of the law, to the rest of the legal system. Blackstone divides what he calls law regarding the relative rights of persons into law regarding public relations and law regarding private relations. Under the first of these he places constitutional law and the powers, rights and duties of subordinate magistrates, of the clergy and of persons employed by land or sea in the military defenses of the state." (Austin's Jur., Vol. II, pp. 776, 777.)

made clear that the plan is logical and tends to a more concise and a clearer statement of our law. The end of classification is to make the law more easily ascertainable.

The opinion and example of James Wilson is of great weight, from the fact that he was a great lawyer, a great civilian, a great jurist, and was one of the chief architects of our Jurisprudence. That we are not saying too much on his behalf is attested by the fact that Bryce, the English historian, says of him "that he was one of the great luminaries of his time to whom subsequent generations of Americans have failed to do full justice."

In treating the subject of American law, he, Wilson, adopts what is now the approved plan of grouping a portion of his materials under a general part, made up of general principles, maxims, definitions of leading elementary words, and then proceeding to the specific subject of municipal law.

Upon the specific question of legal classification, he speaks in no uncertain tones.

"Our municipal law," he says, I shall consider under two great divisions. Under the first, I shall treat of the law, as it relates to persons; under the second, I shall treat of it, as it relates to things. . . .

"In considering the law as it relates to persons, the legislative department of the United States will occupy the first place, the executive department the second and the judicial department the third. . . .

"As to the second great division of our municipal law, which relates to things, it may be all comprehended under one word—property. Claims, it is true, may arise from a variety of sources, almost infinite; but the declaration of every claim concludes by alleging a damage or a demand." (1 Wilson's Wks., 42–5.)

Under this he speaks of public and private property, property real and personal, estates in realty, etc. He concludes this portion as follows:

"Property may consist of things in possession or of things in action.

“Land, money, cattle, are instances of the first kind; debts, rights of damages and rights of action are instances of the second kind.

“These are prosecuted by suit.” (1 Wilson’s Wks., 45.)

This is sufficient to indicate that our first great jurist, who has been termed by able critics the pioneer of American Jurisprudence, followed the division which had been made use of by Hale and Blackstone, and is the adoption of the formula of the civilians.

When we consider that no American text writer has ever adopted the classification of public and private law, but that every great law writer has practically conformed to the other classification, we may readily understand how great a change would be required in departing from this traditional treatment. When introduced, public law and private law were distinct bodies. When they ceased to be so the reason upon which the classification was based ceases to exist.

We think it may not unfairly be required of those advocating this new classification that they subject it to the test of a practical application by endeavoring, in some considerable measure, to exhibit our law under its headings.

This, after all, is the crucial test. We know that the law can be well exhibited under the other classification, because it has been done. We know that it never has been done under the classification above mentioned, and while this is no conclusive reason why it may not be, it presents some argument against it.

This report is made as a question to the Association. The views expressed have not had such consideration from all the members of the committee as to enable them to make a recommendation approving the positions advanced. It is desirable that the members give to the subject such consideration as will enable them to act on the recommendation of some plan of Legal Classification at the next meeting of the Association.

AMERICAN LAW.

MUNICIPAL LAW.

PERSONS.
* *Personæ*.
Status or
personal
relations.

Public.

The People.

The Nation.
The States.Public domain.
Systems of law.

National.

Legislative.
Executive.
Judicial.

Magistrates

1. General
state offi-
cers.Legislative.
Executive.
Judicial.

State.

2. Local
state offi-
cers.Public corpora-
tions.
Municipal cor-
porations.Several
Classes.Private corporations.
Natives.
Citizens.
Denizens.
Aliens.

Private.

Civil Rights

Political rights.
Personal security.
Personal liberty.
Equality.Domestic
Relations.Husband and wife.
Parent and child.
Guardian and ward.
Apprentices.

Species.

Chattels.
Choses.

THINGS.

Personal.

Modes of
Transfer.By Con-
tract.Elements
of.Parties.
Assent.
Form.
Consideration.
Subject-matter.

Species of.

Agency.
Partnership.
Master and ser-
vant.
Sales of chat-
tels.
Mortgage of
chattels.
Bailments.
Innkeeper and
guest.
Common car-
riers.
Insurance.
Guaranty and
surety.
Negotiable in-
struments.Gifts.
Devise or
Will.
Descent.

Real Property.....

ACTIONS.

The Judicial Establishments.
Courts and Jurisdiction.
Elements of Causes.
Forms of Action.
Parties to Action.
Pleadings.
Practice.
Evidence.
Appellate Jurisdiction and Procedure.

CRIMES AND CRIMINAL PROCEDURE.

INTERNATIONAL
LAW.

PUBLIC.

PRIVATE. (CONFLICT OF LAWS.)

* It is to be regretted that a technical word must be employed, which does not, in its popular sense, express the exact idea, but which, like many other words, must be read in the technical sense. *Personæ* denotes the condition arising artificially out of the social state, which attaches to the natural individual (*homo*), and constitutes what we term *status*.

SPECIES OF THINGS REAL.	{ 1. Things Corporeal. { 1. Land. 2. Fixtures. 2. Things Incorporeal.	
OF OWNERSHIP.	{ 1. Original source of private ownership. 2. The manner of creating property in land. 3. The capacity of persons to take property in land. 4. The character of ownership which the individual may acquire. Property contrasted with tenure. 5. Restraints on power and mode of alienation.	
ESTATES. Considered with reference to—	{ 1. The quantity of interest, or the duration of enjoyment.	{ 1. Freeholds. { 1. Of inheritance, or in fee. { Fee simple. Fee tail. Base fee. 2. Not of inheritance, life estates. { For life, or <i>pur auter vie</i> . a. Jure uxoris. b. Curtesy. c. Dower. d. Community. e. Homestead.
		{ 2. Less than freehold. Chattels real. { 1. For years. 2. At will. 3. On sufferance. 4. Year to year.
TITLE.†	{ 2. Nature of interest and character of possession.*	{ 1. Legal. { 1. Ownership. (Freeholds.) 2. A tenancy. (Less than freehold.) 3. Interests without possession, with or without occupancy. { Easements. Or servitudes. Licenses. Commons. Rents. Annuities. Franchises.
		{ 2. Equitable. { Uses and trusts. Powers.
	{ 3. As to time when it may be enjoyed.	{ 1. Possession. 2. Remainder. 3. Reversion.
		{ 1. Absolute. 2. Determinable. 3. Conditional. a. Mortgages.
	{ 5. As to the number and connection of tenants.	{ 1. In severalty. 2. Joint tenancies. 3. As partners. 4. Tenancies in common. 5. Tenancies in coparcenary. 6. Tenancies by entireties.

* See Challis, Real Prop., p. 42.

† This subject may have an outline, as well as every other complex subject.

REPORT
OF THE
COMMITTEE ON INDIAN LEGISLATION.

EPSON, N. H., July 28, 1902.

JOHN HINKLEY, ESQ., Sec., etc.

Dear Sir :—Your letter of the twenty-first instant, directed to me at St. Paul, Minnesota, has been received by me here this day.

I am spending the summer here, and am absent from my library and without books or reports or anything to aid in making an additional report on remedial legislation for the Indians. I shall be unable to attend the meeting of the American Bar Association, on the twenty-sixth proximo, at Saratoga Springs, and shall be unable to prepare and present any additional report this year. I am glad to be able to communicate the fact that the Indian Committees of Congress have given much consideration to the subject of remedial legislation for Indians during its last session, and that there is an improved sentiment among the members on this subject.

I recommend that you advise each member of the committee of my inability to prepare and present an additional report at the coming meeting and request each to prepare such report as he may deem advisable under all the circumstances. In this way some report and recommendations may be prepared and presented to the Association that may be adopted and aid much in securing the contemplated legislation by Congress.

I have the honor to be very respectfully,

Your obedient servant,

JOHN B. SANBORN.

REPORT
OF THE
COMMITTEE ON UNIFORM STATE LAWS.

To the American Bar Association :

During the past year the states of New Jersey, Ohio and Iowa adopted *verbatim* the "Negotiable Instruments Law," making now nineteen states, one territory and the District of Columbia which have adopted the law.

No states, so far as known, have adopted the proposed law on Divorce Procedure. Several states, before unrepresented, have created Boards of Commissioners on Uniform Laws.

The meeting of the Conference of Commissioners on Uniform State Laws, held this week, as is its custom, just prior to the meeting of this Association, was made doubly interesting by the presence of Mr. M. D. Chalmers, of England, draftsman of the English Bills of Exchange Act and of the Sales of Goods Act. In an informal address he explained the preparation and working of the Sales of Goods Act and of the Law of Partnership in England. It was voted by the Conference to take up the subject of a uniform law in regard to sales or partnership; and the Committee on Commercial Law was instructed to employ an expert and prepare a draft of an act to be submitted to the next annual conference.

The American Bar Association has been of great aid in securing the passage of laws recommended by the Conference of Commissioners, and we recommend its continued aid and the continuance of your committee.

LYMAN D. BREWSTER,
Chairman.

REPORT
OF THE
COMMITTEE ON FEDERAL CODE OF CRIMINAL
PROCEDURE.

To the American Bar Association :

The Committee on Federal Code of Criminal Procedure begs leave to report that the situation remains unchanged as set forth in its last report, except that a communication has been received from the chairman of the Commission appointed to revise the Statutes of the United States, a copy of which is hereto annexed, together with a copy of the answer to the same by the chairman of this committee, which has elicited no reply. In order that the relations of this Association to the Commission since its first establishment may be fully disclosed, the committee deems it proper to file with this report a copy of all correspondence, and, in view of the facts therein disclosed, would recommend that the committee be discharged from further consideration of the subject.

CHARLES F. LIBBY,
For the Committee.

WASHINGTON, D. C., August 28, 1897.

JOHN HINKLEY, ESQ.,
Secretary The American Bar Association,
Baltimore, Md.

Dear Sir:—In the report of the Committee on Federal Code of Criminal Procedure submitted at the recent meeting of your Association we find the following:

“As the result of this correspondence with the United States attorneys replies were received from quite a number of them embodying their suggestions in the above matters and

given in view of a report which would present these changes to the Association for consideration."

In case the replies mentioned in the above are in your custody as Secretary of the Association we will be extremely grateful if you will forward them to us that we may have the benefit of the suggestions therein communicated. If the letters were retained by the chairman of the committee, kindly forward this letter to him as we are not advised of his postoffice address.

Very respectfully,

A. C. THOMPSON,
Chairman.
ALEX. C. BOTKIN.

August 30, 1897.

CHARLES F. LIBBY, ESQ.,
Portland, Maine.

Dear Sir:—I enclose you a letter which I have received from Albert C. Thompson, Chairman of the Committee to Revise and Codify the Criminal and Penal Laws of the United States, asking for the correspondence received from the United States attorneys. Will you please answer the letter and give him the information he desires.

Very truly yours,

JOHN HINKLEY,
Secretary.

September 1, 1897.

HON. ALBERT C. THOMPSON,
Chairman, etc.,
Kellogg Building, Washington, D. C.

Dear Sir:—Mr. John Hinkley, Secretary of the American Bar Association, has forwarded to me, as Chairman of the Committee on Federal Code of Criminal Procedure, your communication of August 28th, and I herewith send you copy of

replies received from the United States District Attorneys in answer to letters from our committee inviting them to make such suggestions as to changes in criminal procedure in the federal courts as their experience would dictate. The letter did not meet with a general response, but some of the suggestions may prove of value. I also take the liberty to send you herewith report of our committee at the last meeting of the Association, as it includes a report on a special matter referred to the committee, namely, the expediency of aiding indigent persons accused of crime in securing competent attorneys, etc.

At the last meeting of the Association our committee was continued for the purpose of aiding your commission in any way in accomplishing its objects, and while I have no reason to suppose that our committee can be of special aid to your Commission, I beg to express our willingness to aid you in any way in our power.

I have the honor to remain,

Very truly yours,

CHARLES F. LIBBY.

WASHINGTON, D. C., July 12, 1901.

CHARLES F. LIBBY, ESQ.,

Attorney and Counselor at Law,

Portland, Maine.

Dear Sir:—We address you as a member of the Committee on Federal Courts of the American Bar Association in the hope that your committee will take such action as to secure from the Association at its next meeting a specific expression upon the changes which we are proposing to recommend in the organization, jurisdiction and practice of the courts of the United States. The more important of these are as follows:

1. That all original jurisdiction be consolidated in the district courts.
2. That additional district judges be provided in those districts where they will be needed to insure the prompt transaction of business.

3. That the circuit courts be made the intermediate courts of review instead of the circuit courts of appeal.

4. That the circuit courts shall consist of the justice of the Supreme Court assigned to the circuit, and two circuit judges or three circuit judges.

5. That an additional circuit judge be appointed each for the first and fourth circuits, so that each circuit shall have three circuit judges.

6. That the circuit judges be relieved of duties at *nisi prius*.

7. That the salaries of judges be increased as follows: Chief Justice of the Supreme Court, \$15,500; associate justices, \$15,000; circuit judges, \$9000; district judges, \$7500.

8. That upon appeal or proceeding in error the original transcript of the evidence, with the exhibits, be sent to the appellate court, and that only such parts of the record and of such transcript be printed as may be necessary for consideration upon appeal, to be determined by agreement of the attorneys or settled by the court.

9. That upon a trial by the court without the intervention of a jury, the court shall be required, upon the request of either party, to submit findings of fact and conclusions of law in writing; this for the purpose of the review provided by Section 700 R. S.

10. That in cases where the decisions of the circuit courts of appeal are now made final, an appeal to the Supreme Court be allowed as of right where the question involved is one that has been differently determined in different circuits.

11. That provision be made for the summary review by the circuit courts of the orders of the district courts in injunction and receivership cases.

12. That appeals in *habeas corpus* cases be conformed substantially to appeals in other cases under the Act of 1891.

13. That a uniform system of appeals be established from courts of last resort in the territories to the federal courts.

We shall be glad to explain any matters in the above upon which you may desire further information.

It is our purpose to submit the revision of the judiciary title of the revised statutes in November next.

Very respectfully yours,

A. C. BOTKIN,
DAVID K. WATSON,
W. D. BYNUM,
Commissioners.

WASHINGTON, D. C., June 16, 1902.

CHARLES F. LIBBY, ESQ.,
Portland, Me.

Dear Sir:—My attention has just been directed to a report submitted by you to the American Bar Association at its meeting in 1901 from the Committee on Criminal Procedure, as follows:

The Committee on Federal Code of Criminal Procedure begs leave to report that since the appointment by the President, under authority of Congress, of a Commission to revise the criminal laws of the United States, the active duties of the committee have been, in a large degree, restricted, if not altogether suspended, as it has been continued for the sole purpose of co-operating with that Commission in its work. Soon after the appointment of that Commission the chairman of this committee transmitted to the Commission certain materials which had been collected by the committee accompanied by a written communication stating that the committee would be pleased to co-operate in any way that might be found advisable in the work of the Commission. No reply has been received to that communication, nor has the Commission indicated any desire on its part for the co-operation of this committee. In view of these facts the expediency of continuing the committee seems quite doubtful.

I have been a member of the Commission since its organization and chairman for over three years. I have no recollec-

tion of the communication which you mention and it is not among our files.

It is within my knowledge that the Commission has always entertained an earnest desire to act in co-operation with the Association, and, in the absence of imperative considerations to the contrary, to embody its views. This is true in all respects, but especially in the performance of the duty assigned to us concerning the organization and practice of United States courts. After diligent efforts in that behalf, which met with little success, we sent to each member of the appropriate committee a letter in which we outlined the more important changes which we had in contemplation and asked for an expression upon each. These communications elicited no responses that would serve for our guidance and we were obliged to submit our report on Federal Courts without the benefit of the advice which we had sought in the utmost good faith.

I cannot avoid the conviction that the Association might have properly and profitably accepted our overtures and extended its aid to us. Its success in securing independently the action of Congress in behalf of its recommendations has not been notable, and I may mention in this connection the legislation which it promoted respecting appeals from orders in injunction and receivership cases.

I am not writing in a censorious spirit; such a tone would be neither respectful nor just. I do not fail to realize that the season of the year and the other conditions attending the annual meetings of the Association are not conducive to the mature consideration of questions that inevitably invite differences of opinion and debate. At the same time it would seem that the committees might co-operate with us on the several subjects that are respectively within their purview.

It should be added that I write of my own motion and that the other members of the Commission are not to be held responsible for the expressions herein conveyed.

Very truly,

ALEX. C. BOTKIN.

PORTLAND, MAINE, June 24, 1902.

HON. ALEXANDER C. BOTKIN, Chairman, etc.,
Rooms 420-424 Bond Bldg.,
Washington, D. C.

Dear Sir:—I am in receipt of your favor of the 16th inst. and note its contents. In answer thereto I beg to send you herewith a copy of the correspondence I had with Hon. Albert C. Thompson, Chairman of your Commission, under date of September 1, 1897, enclosing to him copies of the correspondence I had had, as Chairman of the Committee on Federal Code of Criminal Procedure of the American Bar Association, with the different United States District Attorneys, and I beg to add that neither the receipt of my letter nor the accompanying enclosures was ever acknowledged by Mr Thompson, nor have I, as chairman of the committee, nor to my knowledge, has any member of the committee, ever received any communication from your Commission relating to the revision of the Federal Code of Criminal Procedure up to the date of your letter above mentioned.

As a member of the "Committee on Federal Courts" of the American Bar Association (a different committee you will notice) I received, in July of last year, a communication from your Commission relating to proposed changes in the organization, jurisdiction and practice of the federal courts. This letter announced the purpose of your Commission to submit the revision of the judiciary title of the Revised Statutes in November last. The suggestions contained in that letter related to matters on which the Committee on Federal Courts of our Association had already reported in the form of a bill which was then pending before Congress. As that bill expressed the judgment of the American Bar Association on the matters referred to in your communication, and was the outcome of long and careful consideration, as shown in the annual reports of the Association, and in view of the fact that your Commission had this bill before them when they reached opposite conclu-

sions on certain points, little remained to be done but submit matters of difference to the decision of Congress. As a member of the latter committee I think I voice the past and present feelings of its members, as I know I do those of the former committee of which I was chairman, when I say that the members have always been ready to co-operate in any way in their power in the work of your Commission, and if they have not done so it was because they did not understand they were invited so to do. Certainly, the fact that no reply was ever received to the letter addressed to Mr. Thompson, nor any communication was ever received from any member of your Commission, verifies the report made to the Association in 1901 so far as the revision of the Federal Code of Criminal Procedure is concerned, a matter which that committee has especially in charge. I have not seen any report from your Commission on the above matter.

It may be proper to add, in the language of your own letter, that "I write of my own motion, and that the other members of the committee are not to be held responsible for the expressions herein conveyed." I am,

Very truly yours,

CHARLES F. LIBBY.

REPORT
OF THE
COMMITTEE ON INDUSTRIAL PROPERTY AND INTERNA-
TIONAL NEGOTIATION.

(a) Origin of the general form of commercial treaties negotiated by the United States. (b) Earliest form of trade-mark conventions and additional articles to commercial treaties (from 1868 on). (c) Second form of trade-mark conventions (from 1877 on). (d) Return to form of 1868. (e) Latest form of conventions. (f) Comparison of the policy of the United States at different periods. (g) Policy, how far affected by constitutional limitations. (h) The true policy of the United States.

At the time when your committee was appointed, the questions in regard to industrial property to be settled by negotiations between the United States Government and other powers were many and serious. They are now even more pressing, because of the ever-increasing commercial rivalry of the nations. The old treaties and conventions are too narrow for our ever-growing commerce and our ever-multiplying inventions.

(a) The general scheme of our commercial treaties seems to be based upon the treaty of amity and commerce with France, concluded February 6, 1778, which affected industrial property only on the side of transportation in ships, freedom from imposts other than those imposed on property of French citizens, and freedom of sale. It was a reciprocity treaty as to freedom of trade merely. It did not go so far as the protection of the signs and marks by which trade could be rendered continuous or retained by the same establishment or country, nor did it provide for securing to the American inventor his inventions in France. It is probable that these matters, which are now of the greatest moment, were not brought before the negotiators

of this treaty, since at the date of its conclusion the present conditions in regard to the protection of trade-marks did not prevail, *e. g.*, marks were obligatory in France on cloth, and were used to prevent fraud on the part of the manufacturer by putting out bad goods rather than to indicate good goods and, along with such indications, to act as a means of creating and retaining trade. Further, the marks most employed at that time on goods for export from the United States were marks of inspection. No patent laws existed in the United States. The envoys of the United States seem, therefore, to have directed their attention with great foresight to the securing for the United States of such additional rights as might be granted by France to other nations in the future, and also to the securing for the commerce of the United States in a state of war, such as then existed, the same rights as were possessed by other nations.

It was not until 1867 that the conditions seemed ripe for a treaty going further than to secure the free right to trade and the protection of trading vessels.

(*b*) In 1867 or 1868 the Russian Government seems to have proposed to the United States Government that an additional article be added to the treaty of navigation and commerce of 1832. The additional article concluded January 27, 1868, reads as follows:

“The high contracting parties, desiring to secure complete and efficient protection to the manufacturing industry of their respective citizens and subjects, agree that any counterfeiting in one of the two countries of the trade-marks affixed in the other on merchandise to show its origin and quality shall be strictly prohibited and repressed and shall give ground for an action of damages in favor of the injured party, to be prosecuted in the courts of the country in which the counterfeit shall be proven.

“The trade-marks in which the citizens or subjects of one of the two countries may wish to secure the right of property in the other must be lodged exclusively, to wit, the marks of citi-

zens of the United States in the Department of Manufactures and Inland Commerce at St. Petersburg, and the marks of Russian subjects at the Patent Office in Washington."

This was followed by an article respecting trade-marks concluded December 20, 1868, additional to the treaty of commerce and navigation of July 17, 1858, with Belgium. The additional article is in almost the same language as that added to the Russian treaty, but with the further clause:

"It is understood that if a trade-mark has become public property in the country of its origin, it shall be equally free to all in the other country."

A convention concerning trade-marks alone was concluded April 16, 1869, with France. It is substantially in the Russian form, with the Belgian addition, except that it omits the preamble, viz.:

"The high contracting parties, desiring to secure complete and efficient protection to the manufacturing industry of their respective citizens and subjects."

In Article XVII of the Convention respecting Consuls, concluded December 11, 1871, with Germany, the language theretofore used in regard to trade-marks was modified as follows:

"With regard to the marks or labels of goods, or of their packages, and also with regard to patterns and marks of manufacture and trade, the citizens of Germany shall enjoy in the United States of America, and American citizens shall enjoy in Germany, the same protection as native citizens."

(c) This was followed by a declaration respecting trade-marks, concluded October 24, 1877, with Great Britain, in which a form, followed until 1884 (except in the case of Serbia), was adopted, viz.:

"The subjects or citizens of each of the contracting parties shall have, in the dominions and possessions of the other, the same rights as belong to native subjects or citizens, or as are now granted or may hereafter be granted to the subjects and

citizens of the most favored nation, in everything relating to property in trade-marks and trade labels.

“It is understood that any person who desires to obtain the aforesaid protection must fulfill the formalities required by the law of the respective countries.”

The agreement concerning trade-marks concluded September 24, 1878, with Brazil, the convention concerning trade-marks concluded June 19, 1882, with Spain, the declaration for the reciprocal protection of marks of manufacture and trade concluded June 1, 1882, with Italy, the convention concerning trade-marks concluded April 7, 1884, with Belgium, are all substantially in the same language as the declaration with Great Britain above.

(*d*) In 1881 the Russian form was repeated in the convention with Servia, called a convention for facilitating and developing commercial relations, concluded October 14, 1881. Why this form was used and then departed from in the case of Spain, Italy and Belgium is not apparent and the change can only be ascribed to Russian influence in Servia.

In 1887 the United States adhered to the convention for the Protection of Industrial Property, concluded at Paris, March 20, 1883.

At the time of the adhesion of the United States, the following states were parties to the convention, viz.: Belgium, Brazil, Dominican Republic, France, Great Britain, Italy, Netherlands, Norway, Portugal, Salvador, Spain, Sweden, Switzerland and Tunis.

The convention relates to trade-marks, commercial names, false indication of origin and to patents. It makes the following general provision :

“Article 2. The subjects or citizens of each of the contracting states shall enjoy, in all the other states of the Union, so far as concerns patents for inventions, trade or commercial marks, and the commercial name, the advantages that the respective laws thereof at present accord, or shall afterwards accord to subjects or citizens. In consequence they shall have

the same protection as these latter and the same legal recourse against all infringements of their rights, under reserve of complying with the formalities and conditions imposed upon subjects or citizens by the domestic legislation of each state."

This language is very much extended by Article 6 of the convention, which says that

"Every trade or commercial mark regularly deposited in the country of origin shall be admitted to deposit and so protected in all the other countries of the Union."

The French words translated "so protected" are "*protégée telle quelle*," i. e., protected in the form in which they are used. But in order that there might be no misunderstanding it was provided in the final protocol as follows:

"Paragraph 1 of Article 6 is to be understood in the sense that no trade or commercial mark shall be excluded from protection in one of the states of the Union by the mere fact that it may not satisfy, in respect to the signs composing it, the conditions of the laws of this state, provided that it does satisfy, in this regard, the laws of the country of origin, and that it has been in this latter country duly deposited. Saving this exception which concerns only the form of the mark, and under reservation of the provisions of the other articles of the convention, the domestic legislation of each of the states shall receive its due application."

This is a distinct return to the Russian form of convention which seems to have prevailed in the United States from 1868 to the British Declaration in 1877 and to have been introduced again in the single case of Servia in 1881.

But the convention of Paris is a much broader convention than had ever before been entered into by the United States, as it provided for the protection of the commercial or trade name without registration, for the seizure of products bearing unlawfully a trade or commercial mark or a commercial name, and for the seizure in transit of goods bearing false indications of origin joined to a fictitious commercial name or a name borrowed with a fraudulent intent. It provided also a cure for

the defects of the European patent systems which require in many cases the application to be made in the country itself before publication or patenting elsewhere, or use in such country. It is evident that where such laws prevail it should be provided that the filing of an application in one country shall be considered the date of filing of all subsequent applications in other countries for the purpose of avoiding the prohibition against publication or patenting elsewhere or use in the country.

(e) In the convention for the reciprocal protection of trade-marks and trade-labels concluded June 15, 1892, with Denmark, a somewhat different form was adopted, viz. :

“ With a view to secure for the manufacturers in the United States of America and those in Denmark the reciprocal protection of their trade-marks and trade-labels, the undersigned, duly authorized to that effect, have agreed on the following dispositions :

“ Article I. The subjects or citizens of each of the high contracting parties shall in the dominions and possessions of the other have the same rights as belong to native subjects or citizens in everything relating to trade-marks and trade-labels of every kind.

“ Provided always, that in the United States the subjects of Denmark, and in Denmark the citizens of the United States of America, cannot enjoy these rights to a greater extent or for a longer period of time than in their native country.

“ Article II. Any person in either country desiring protection of his trade-mark in the dominions of the other must fulfill the formalities required by the law of the latter, but no person, being a subject or citizen of one of the contracting states, shall be entitled to claim protection in the other by virtue of the provisions of this convention unless he shall have first secured protection in his own country in accordance with the laws thereof.”

Thereafter there was incorporated into the treaty of commerce and navigation concluded November 22, 1894, with Japan an article (16) which reads as follows :

“The citizens or subjects of each of the high contracting parties shall enjoy in the territories of the other the same protection as native citizens or subjects in regard to patents, trade-marks and designs upon fulfillment of the formalities prescribed by law.”

This is the first treaty with a single power in which patents are mentioned.

By a convention concluded January 13, 1897, with Japan, the above Article XVI of the treaty of 1894 was given full force and effect from the date of ratification of the convention.

(*f*) The policy of the United States relating to trade-marks as shown in the treaty with Russia in 1868, in the convention with France in 1869, in the convention with Servia in 1881, and in the convention for the protection of industrial property adhered to in 1887, was a policy looking to the protection of the trade-marks of citizens of the United States in other countries in the form used in the United States. In return for such protection abroad this government gave similar rights to the subjects or citizens of such foreign countries.

Such is the continuing policy of Russia as shown in her convention with Switzerland in the year 1899, as follows:

“Convention concerning the reciprocal protection of trade-marks between Russia and Switzerland, concluded April 19, 1899.

“Article 1. The citizens and subjects of the two high contracting parties shall enjoy in the states of the other the same protection as nationals for everything which concerns the ownership of trade-marks under the condition of fulfilling the formalities prescribed on the subject by the respective laws of the two states.

“It is permitted always in Switzerland to Russian subjects and in Russia to Swiss citizens to cause their marks to be legally registered in the form in which they have been registered in the country of origin, provided that they are not contrary to morals or public order.

“Article 2. A registration in Switzerland of a Russian mark

and in Russia of a Swiss mark may be refused conformable to the provisions of the law of the respective countries if the mark is not sufficiently distinguished from another previously registered.

“The citizens and subjects of the two states cannot enjoy in the other the protection of their marks in a wider class nor for a longer period than they enjoy them in their own country.”

In 1871 in the convention with Germany, in 1877 in the declaration with Great Britain, in 1878 in the agreement with Brazil, in 1882 in the convention with Spain, in the same year in the declaration with Italy, in 1884 in the convention with Belgium, in 1892 in that with Denmark, and in 1897 in that with Japan, the United States agreed to protect only such marks as could be adopted by our citizens as trade-marks under our laws, and not such as were not entitled to the protection of our laws at home.

It may be claimed that these conventions and declarations should be interpreted to mean that trade-marks, good as such in a foreign country, should be protected here in the same manner as the valid trade-marks of our citizens, and that the mere registration in the United States Patent Office is all that is required to secure the protection of our laws for the foreign mark. In fact, however, the registration of a foreign mark is not allowed unless the mark be a trade-mark recognized as such by our laws. In practice, therefore, the foreign trade-mark is not protected because it is a trade-mark valid in a foreign country, but only because it complies with our laws. In some cases we go further and agree to protect foreign trade-marks only so long as they continue to be valid trade-marks in the country of origin.

(g) The policy of the United States in regard to the form of treaties or conventions relating to trade-marks does not seem to be affected by an interpretation of the terms of the Constitution of the United States.

The delegates from the United States to the conference held at Paris in 1880 for the preparation of a convention for the

Protection of Industrial Property (concluded at Paris, March 20, 1883) were advised, by the Secretary of State, "that, in view of the domestic character of much of our legislation, especially that relating to trade-marks, and their federal protection under existing treaties, the Government of the United States could not submit such questions to the convention without the reservation that its conclusions on those subjects be considered absolutely subordinated to the provisions of any future legislation of the country."

The Supreme Court, a few days after these instructions were given to the delegates and before the meeting of the conference, declared the Trade-Mark Act of 1870 unconstitutional, declining, however, to pass upon the power of the President, with the advice and consent of the Senate, to make treaties regarding trade-marks. This power had not been questioned from the time of its first exercise by the adoption of the additional article to the treaty of 1832 with Russia. Senators Sumner and Trumbull had introduced bills to carry the Russian treaty into effect. The Senate, since that decision, has repeatedly ratified trade-mark conventions, including the Convention of Paris of 1883, on the initiative of the President.

It is not to be presumed that in thus obtaining for its citizens in a foreign country the rights of citizens or subjects of that country by reciprocal grants of like rights the government has exceeded its constitutional authority.

(h) It seems to us that the policy of the United States Government should be to secure protection for the trade-marks of its citizens abroad in the form in which the marks are used at home. This will lead to expansion of trade in one article under one brand in all countries with which conventions can be made and a consequent uniform spread of the business associated with the trade-mark. Acquaintance with the goods in one country will tend to carry the trade in such goods into other countries, while the guaranty of genuineness attaching to the trade-mark will insure the foreign public against fraud both in connection with the goods and their origin.

While the rights of those who have heretofore adopted and used domestic trade-marks in good faith should be preserved irrespective of use abroad, and foreign marks not complying with our laws may be specially provided for to prevent confusion, still trade-marks adopted in future should be made to conform to the policy outlined.

Further, the policy of our government should be to secure to the inventor the fruits of his genius in all countries where patent laws prevail. This may be accomplished by conventions which will render it possible to obtain valid patents abroad on application made after patenting here. A patent monopoly local to the United States is not an advantage to our people, and therefore means should, as far as possible, be secured for rendering the monopoly of the inventor universal. Such means are intended to be provided in the Convention for the Protection of Industrial Property, concluded at Paris, March 20, 1883.

But treaties or conventions alone will not enable the government to carry out a policy. These must be supplemented by such laws as may be necessary to carry the treaties and conventions into effect. There is no adequate law on the statute book for the protection of trade-marks of citizens or subjects of other countries and the patent statute is at variance with the Convention of Paris of 1883, as amended at Brussels in 1902.

The honor of the country, as well as its interest, require that laws should be passed which will put into complete operation the existing treaties, conventions, agreements and declarations in regard to industrial property.

FRANCIS FORBES,
WILLIAM L. PUTNAM,
PAUL BAKEWELL.

REPORT
OF THE
SPECIAL COMMITTEE ON TITLE TO REAL ESTATE.

To the American Bar Association :

The Special Committee on Title to Real Estate begs leave to submit the following report :

This committee is charged with the duty of securing legislation to prevent the hardships to innocent purchasers and encumbrancers of real estate arising under Section 3186 of the Revised Statutes of the United States. That section reads as follows :

“If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties and costs that may accrue in addition thereto, upon all property and rights to property belonging to such person.”

And it will be recalled that in the case of the United States *vs.* Snyder, 149 U. S. 210, the Supreme Court held that the lien thus created is valid even as against a *bona fide* purchaser or encumbrancer in good faith, though he have no knowledge and no means of knowing of the delinquency on the part of the person from or through whom he acquires his title or lien. No provision for filing or recording any notice, apprising intending purchasers or encumbrancers of the claims of the government is made in the statute and so the lien is undiscoverable. The lien is of such a comprehensive character that it covers all the property and rights to property of the delinquent situated anywhere in the United States, and so in the case of

every title taken in the United States. The impossible task is presented of ascertaining whether anyone in the chain ever was a delinquent in the payment of the taxes above referred to while holding the property searched against. The indebtedness may have arisen years ago, and the business carried on under the internal revenue law may have been conducted thousands of miles away from the property affected by this omnibus and secret lien.

As previously reported, this committee, in compliance with the direction of the Association, prepared a memorial, and the same was presented to each House of Congress.

Your committee also reported that such memorial received the approval of the committee (on the amendment of the law) of the Association of the Bar of the City of New York; of the Lawyers' Title Insurance Company of New York, and of the President of the Real Estate Title Insurance Company of Philadelphia.

At the same time your committee reported that it was of the opinion that it would be of service in securing the end in view to authorize the committee to confer with officers of the government and formulate and advocate legislation in the premises and thereupon the Association so authorized your committee.

Your committee is pleased to report that it has secured an expression of opinion from the Secretary of the Treasury that he is in heartiest accord with the position taken by this Association.

Your committee is therefore encouraged to believe that with such concurrence in our views your committee will soon be able to secure appropriate action by Congress to prevent the hardships above referred to.

Respectfully submitted,

FERDINAND SHACK,
Chairman.

August 28, 1902.

REPORT
OF THE
SPECIAL COMMITTEE ON LOUISIANA PURCHASE EXPOSITION.

To the American Bar Association :

The Special Committee on the Louisiana Purchase Exposition respectfully reports :

Since the appointment of this committee, pursuant to resolutions of this Association adopted at its annual meeting in 1901, the authorities having in charge the celebration of the Louisiana Purchase at St. Louis, Mo., have, with the consent and by the authority of the Congress of the United States, postponed the holding of the Exposition to 1904.

Those having charge, accordingly, have postponed the holding of the Universal Congress of Lawyers and Jurists until that year, and have appointed a committee consisting of thirty representative lawyers of the city of St. Louis, which, in connection with committees, executive and special, of the Bar Associations of the city of St. Louis and the states of Missouri and Kansas, and of this Association, are now engaged in formulating the plan and program of the proposed Congress and the outline plan thereof, so far as framed, is as follows :

**OUTLINE PLAN OF " UNIVERSAL CONGRESS OF LAWYERS AND
JURISTS."**

1. The Congress shall be composed of not less than six hundred delegates, selected as follows :

(a) A stated number of delegates to be named by the governments of the world upon the recommendation of the highest courts thereof, or of their departments of justice.

(b) Delegates to be apportioned among the Bar Associations of the United States and kindred associations of the other countries of the world, and to be named by such associations.

(c) Delegates from the law universities and colleges of the world, to be named by the faculty or constituted authorities thereof.

(d) Such eminent judges, jurists and lawyers as may be specially asked to be delegates.

2. The American Bar Association, through its designated representatives, to join in the invitation to the powers appointing the delegates, and to specially invited delegates.

3. The Congress to meet at St. Louis in September, 1904, in a hall to be provided by the Louisiana Purchase Exposition Company, and to be in session from three to five days; the meetings to be open to the public, save as the Congress may determine to have one or more executive sessions.

4. The program of exercises to consist of addresses, papers and debates upon topics of jurisprudence to be prepared by a joint committee of the Louisiana Purchase Exposition Company, the American Bar Association and the Bar Associations of the city of St. Louis and of the states of Missouri and Kansas.

5. At the end of the session a banquet to be given to the members by the Louisiana Purchase Exposition Company.

6. The proceedings of the Congress to be published in book form by the Louisiana Purchase Exposition Company for distribution.

7. Should it be determined to hold a meeting of this Association in St. Louis immediately preceding or following or concurrent with the Congress, the Exposition authorities are to extend the same privileges and courtesies to this Association as to the Congress.

For the information of this Association we append hereto a list of the committees above referred to other than those of this Association.

We recommend to this Association the approval of this tentative plan, and that this committee be continued and authorized to approve such modifications thereof as may meet its judgment.

JAMES HAGERMAN, *Chairman.*

LOUISIANA PURCHASE EXPOSITION COMPANY'S SPECIAL COMMITTEE ON "UNIVERSAL CONGRESS OF LAWYERS AND JURISTS."

F. W. Lehmann, *Chairman*; Jno. W. Noble, James Hagerman, Gustavus A. Finkelnberg, R. H. Kern, J. E. McKeighan, Shepard Barclay, John H. Overall, Franklin Ferriss, Leo Rassieur, Horatio D. Wood, Given Campbell, James A. Seddon, Isaac H. Lionberger, Eleneious Smith, Charles Claflin Allen, Henry T. Kent, John D. Johnson, Paul F. Coste, Richard B. Haughton, Thomas B. Harvey, George W. Tausig, Arthur B. Shepley, Albert Arnstein, James L. Blair, E. J. Robert, Valle Reyburn, Jacob Klein, Clinton Rowell.

ST. LOUIS BAR ASSOCIATION.

Executive Committee.

Jacob Klein, Samuel H. West, George T. Weitzel, John F. Lee, Henry S. Caulfield.

Special Committee on "Universal Congress of Lawyers and Jurists."

A. M. Thayer, *Chairman*; E. B. Adams, S. P. Spencer, Wilbur F. Boyle, A. G. Cochran, F. N. Judson, R. F. Walker, Jno. F. Lee, H. L. Christie.

MISSOURI BAR ASSOCIATION.

Executive Committee.

Gardiner Lathrop, Moses Whybark, Selden P. Spencer, C. F. Gallenkamp, Adiel Sherwood.

Special Committee on "Universal Congress of Lawyers and Jurists."

John F. Philips, Virgil Conkling, Ed. L. Scarritt, F. L. Schofield, Gardiner Lathrop.

KANSAS BAR ASSOCIATION.

Executive Council.

C. W. Smith, *Chairman*; Bennett R. Wheeler, J. W. Adams, T. N. Sedgwick, Rezin Iams.

Special Committee on "Universal Congress of Lawyers and Jurists."

J. G. Slonecker, *Chairman*; Otto G. Eckstein, J. W. Green, Charles Hayden, Winfield Freeman.

PROCEEDINGS
OF THE
SECTION OF LEGAL EDUCATION.

August 28, 1902, 3 P. M.

The Section was called to order in the Court of Appeals Room by the Chairman, E. W. Huffcut, of New York.

The Chairman :

In order to expedite matters I think it might be desirable to appoint a Committee on Nominations. If this suggestion meets with the approval of the Section the Chair will entertain a motion to that effect.

On motion it was voted that a Committee on Nominations be appointed by the Chair.

The Chairman :

The Chair will name as the Committee on Nominations W. P. Rogers, of Indiana; Clarence D. Ashley, of New York; Charles W. Needham, of the District of Columbia; R. C. Minor, of Virginia, and George E. Beers, of Connecticut.

In accordance with the usual custom of the Section the Chairman's address will now be in order unless there is some other preliminary business to be presented. I have chosen for my subject this afternoon "A Decade of Progress in Legal Education."

(The Address follows these Minutes.)

The Chairman :

Gentlemen, we have varied somewhat the program for the afternoon, and I shall call upon Mr. Danaher, of the New York State Board of Law Examiners, who is to read a paper upon "Courses of Study for Law Clerks."

Franklin M. Danaher, of New York, then read his paper.

(The Paper follows these Minutes.)

The Chairman :

The Section is now to have the pleasure and the advantage of listening to a paper by Prof. Henry S. Redfield, of the Columbia Law School, on "A Defect in Legal Education."

Henry S. Redfield then read his paper.

(The Paper follows these Minutes.)

The Chairman :

The discussion of the general subject of Professor Redfield's paper, the teaching of civil procedure in the law schools, will now be opened by Prof. Joseph H. Beale, Jr., of the Harvard and the University of Chicago Law Schools.

Joseph H. Beale, Jr., of Massachusetts :

Mr. Chairman and gentlemen. As I wrote to Professor Redfield, I feel that I am quite in accord with his paper, so far as his facts and principles go, and, if local practice is to be taught in the schools, it is hard to see how it could better be taught. But there are other considerations which he has naturally not been able to state in his paper. We shall agree with his primary statement, that what we want to do is to fit students for practice, to make our students the best lawyers possible, to bring out the best that is in them in the direction of the knowledge and practice of law, to give them as fully as possible a knowledge of all the details of the law. In short, we want them to have both the mental qualities and the technical knowledge of detail of the best lawyers, and our effort is so to arrange our instruction that we can bring this about.

His idea is that we can best accomplish this by devoting more time than we now do to the subject of practice. I want to suggest a few considerations which may perhaps tend to a different conclusion. If we had all the time that we cared to take to instruct our students, such a program as he offers would be most admirable. We could teach a student every possible branch of the law which could under any circumstances be useful to him in his profession. We could, in addition, teach him all the intricate features of the local practice of the state, in which he is going to begin his work, and we

could also teach him all the variations from that practice in all the jurisdictions into which he might possibly have to go after he once got started. But in order to teach him all those things he would have to pass his life in the school, and after he got through studying, there would be no time left for him to practice. What we must do is so to train a man that what we have not been able to teach him he can best learn for himself when he goes into practice and has to work up his cases. Is the best thing that we can do for a student to teach him how to go into court and conduct a litigation? Evidently not. The first thing to do is to teach him law, the substance and the soul of law. This should take more than three years, but that is all the time we have to give to it. We have got to lop something off; we don't know everything ourselves, in the first place, and we cannot teach it to him. Now, shall we cut off enough of it to spare out of the three years the time that Professor Redfield requires to teach practice? That is all we have to discuss this afternoon. Not, should we choose to leave out this thing, or that thing, or the other thing; rather, since something must go, what can we leave out with profit? In place of what subject is it best to put this "Practice" which Professor Redfield desires to teach? It is just on that point that I want to make a few suggestions.

In the first place what practice are we going to teach the student? There are some schools to which students from a single jurisdiction come and from which students go to a single jurisdiction. I do not believe there are many. I do not know anything about such schools personally, and what I say may not apply to them. So far as I know law schools, they desire to have students from various jurisdictions. They desire to send their students out into different parts of the country. They believe that by so doing they can best make their influence felt for the betterment of legal education. Now, if that is what a school is striving for, how can it teach the details of any local practice? It would have to teach the details of practice for twenty different states. The diversity

of local practice, then, is of itself an obstacle, an objection, to devoting very much time in any school to the teaching of the details of practice.

But that is, after all, a rather small point. The main question is, is it as well worth while to teach practice as to teach the Law of Suretyship or Mortgage, for instance, or Constitutional Law, or the Law of Corporations, or some other such branch of the law? I believe it is not. Why? In the first place, such branches of law, whether substantive or adjective law, are branches the study of which gives the student the trained mind of a lawyer. The study of practice, carried on no matter for how long, can never give a student the trained mind of a lawyer. For that purpose the time is practically wasted. Then, other things being equal, we ought to prefer, in educating our students, the study of those subjects which will train their minds for the investigation of legal problems after they get out in practice.

In the second place, practice, as distinguished from mere rules of pleading and from a few subjects like the effects of judgments, and so on—local practice—is not in any jurisdiction a matter of scientific precision. It is largely influenced by statutes framed by legislators who have no idea of scientific law. The study of it is a mere memorizing of artificial rules. It can be done and made interesting by anyone with Professor Redfield's genius for interesting young men, but, after all, when it is all done, it leaves the student no more of a real, thorough, genuine lawyer than he was before, because of this lack of scientific value in it.

Then another thing: After all, when it is learned, is it true that it is of an importance comparable with the study of substantive law, if I may use that term in a pretty broad sense to include all law except the law of procedure? Take Professor Redfield's example of the encroaching wall. The lawyer who conducted that suit did not know his business; he ought to have known that if he had an election of remedies, and elected one, he was barred from the others. He ought to

have learned that in the law school. But no lawyer knows everything—even a professor of law—and we may forgive the lawyer for having made a mistake there. His client is left with somebody's wall encroaching on his ground, and he is from time to time obliged to collect the rental value of that ground. Suppose, however, that that same lawyer had, while in the law school, devoted his time to a study of procedure at the expense of the law of corporations, we will say, and then suppose he had a corporation for a client and had made a mistake in the law of corporations, and had wrongfully advised his client, what would have happened then? That would have been a matter of very much more importance. Questions of procedure on the whole are very much less important than questions which Professor Redfield calls "questions of substantive law."

Still further: How many lawyers practice in litigation? How large a proportion of the bar is deriving its excellent subsistence from the trial of causes? Not very large. All this learning that we are asked to put into the schools is devoted merely to perfecting litigants, but the great desire on the part of lawyers is to be able to advise clients who are not going to litigate.

For these reasons, as it seems to me, it is not desirable to displace from our curriculum any of the subjects which we are able now to teach for the purpose of putting in the place of the subjects thus displaced this very interesting study of the rules of practice in litigated cases.

The Chairman:

The discussion which has been so ably opened will be continued by Prof. Thomas A. Bogle, of the University of Michigan Law School.

Thomas A. Bogle, of Michigan:

I feel somewhat embarrassed in taking part in this discussion, and for several reasons. One is, it is my first attendance upon any of the meetings of this Section, and it would seem to me to have been more appropriate for others to have taken

the prominent part in the discussion. Another is, a considerable portion of my time in the last eight years has been spent in attempting to do that which high authority here this afternoon has said there is no time to do, that it is scientifically unimportant that it should not be done, and that it is not worth while to do it.

I may say that upon the general notion expressed in Professor Redfield's paper I am in thorough agreement. I believe there is something in the law other than mere abstract propositions. I believe, further, that, as a general rule, no man knows what a proposition of law means until he attempts to put it in practice—that is, knows what it means to its full extent; that then, and then only, can he measure its latitude and longitude, its height and depth. And, from a practical standpoint, upon what is all law founded? What is it for? I speak now from the standpoint of a practitioner. Out of what does it arise? It must arise out of facts, conditions or circumstances. It is beneficial only in so far as it can be practically applied.

While I agree with Professor Redfield's paper, I would not place the necessity of teaching practice upon a basis so narrow as it seems to me he placed it. I would not place it upon the exceptional cases that he enumerated. I would not place it upon any assumed relation that may exist between the substantive and the adjective law. It may be properly placed there, but my contention is that it is not necessary to narrow the basis for teaching practice to those things enumerated in his paper. I would place it upon the broad proposition that it follows logically from a consideration of the substantive law itself. However it may be in theory and however it may have been historically, the fact, as it seems to me to-day, is that so far as the practitioner is concerned, the substantive law exists. Something takes place. A contract is made. Certain facts transpire. As a result of the two—the fact and the law—there results what is known to the practitioner and to all of us as rights. The right, then, is incident to the fact and the law. There is no need of procedure yet. It operates without any

procedure. The law existing and the fact having happened, the right results. No need of any procedure yet. There is no cause of action yet. Another kind of fact takes place, culpatory, perhaps, in its nature. The right that results from the other two has been invaded, the cause of action is complete, a new right has arisen—a remedial right. Up to this time we need no procedure: Up to this time a knowledge of substantive law is all that is essential. But now the situation changes to a certain extent. A remedy is asked for. What is procedure for? To know how to obtain that remedy. Now why, in common sense, should the instruction of the law school end at this point? If it be important to teach—and we admit that it is—what the abstract propositions of the law are, if it be important to know what facts will create relations to which the law will attach a duty or a right, if it be important that we should teach what facts will result in an invasion of this right and give rise to the new remedial right, why is it not important to go on and give the students some instruction in the method by which the remedy shall be obtained? Is there any logical reason why we should stop there? Is it true to say that all discipline must end there? Is there no discipline involved in the subsequent steps? Is there no discipline involved on the part of the student, if he has before him the facts that lead up to the point which I have mentioned, in requiring him to determine for himself what is the right or the duty that resulted from these other two factors; in what way has the right been invaded or the duty withheld; what is this new right that has resulted from the invasion; is there no discipline in requiring him to investigate as to how the remedy may be obtained? It strikes me that there must be some discipline in that?

So I say I am not of the opinion that the teaching of procedure is a matter that has no scientific value, no disciplinary value, and that it is not worth while to teach it.

As to the methods of teaching, I admit that is a difficult matter. It seems to me, however, that the first proposition

that must be recognized is that even the adjective law, the law of procedure, has its substantive side and then its wholly practical side. That is to say, we may give a course in practice. For instance, we may have recitations in respect to the process, in respect to its service and in respect to its return; we may have recitations in respect to the different pleadings that are permitted, and the parts of each pleading, and we may go on from the process to the appearance, and from the appearance to pleading, and from the pleading to trial and from the verdict to judgment, and from the judgment to execution. We give class-room instruction upon each of those topics. That is teaching practice in a way. It is teaching procedure in a way. All of that may be done, and yet the student is not actually practicing. I would not underestimate the value of that kind of instruction. I think it should be given, but my notion is that this instruction in procedure, if we are to make practicing lawyers, must go beyond that kind of teaching, and there must and should come a time before the student reaches the end of his third year when talk about practice has ceased and when there are placed in his hands actual facts and he is required to issue, serve and return his process; required to prepare and file his pleadings; required to join issue with his adversary, and required to take all of the steps in an actual proceeding at law, or in equity, as the case may be.

I recognize that there are practical difficulties here, and the time element is one of them. I recognize that the many jurisdictions from which the students come is a difficulty. But it seems to me that they are difficulties which, to a very large extent, may be overcome—difficulties which, to some extent, will solve themselves. Perhaps I could not express myself in any more intelligible way than to indicate the attempt that I have been endeavoring to make in the last eight years in the teaching of practice in the school with which I am connected. In the senior year we divide the course into two parts. In the first course we require the students to arrange themselves into groups of four, two of whom are to be attorneys for the

plaintiff and two of whom are to be attorneys for the defendant. Statements of fact are handed them, drawn so that it is believed they will give rise to disputed questions of law. They are supposed to issue process, to prepare their pleadings, file them with the clerk and contend with each other until they have joined issue. It is for the student himself, if he represents the plaintiff, to determine, first, whether a cause of action arises upon these facts. If so, what is that cause of action. Then if he determines that it states a cause of action in his favor he is supposed to commence his action as he would in an actual case. The responsibility of knowing what that cause of action is is placed upon him. The statement would contain irrelevant and immaterial facts, but he must make the selection himself; he must draw the pleadings. His adversary must prepare the pleadings on his side of the question. And so proceeding back and forth until in their judgment they have properly attained an issue. We have our motion days when, if the pleadings filed on the part of the plaintiff are not satisfactory to the attorneys for the defendant, they are expected to make the proper motion or file a demurrer or take any other step that in their judgment may be proper. They are supposed to wrestle with each other until they have joined issue. They have an opportunity to come into court. We aim to give it the character of an adversary proceeding. Nevertheless, they go along without supervision until in their judgment they have properly attained issue. I say without supervision. Certain instructions are given them in connection with their statements of fact, and they can come in on motion days and raise the questions which in their judgment ought to be raised. When they have finally joined issue and given notice of that fact the cases are ready for hearing upon the pleadings. At that time the students are examined upon the steps they have taken. They are asked for their reasons for having taken the steps that they have taken, and the pleadings are passed upon. If it is believed that they have been correctly drawn they are accepted. If it is believed that

they are not correctly drawn they are rejected. After pleadings have been accepted then the case is set down for a law argument, which comes on before some member of the faculty on a day stated, and at that time the respective attorneys argue the propositions of law that they believe are involved. They are required to make an oral argument; they are required to file written briefs. The case is then submitted to a member of the faculty for decision and he renders his opinion either then or upon some subsequent day.

The purposes we have in view in that first course, speaking generally, are three: To issue, serve and return the proper process which is necessary to bring the defendant into court; to prepare and file the proper pleadings; and to make legal argument upon the facts involved. Those are the three general points. We regard it as of some importance that, as a matter of fact, there is an adversary proceeding pending. The attorneys for the plaintiff have assumed to bring the action; in their judgment they have a cause of action; they have filed what they believe to be the necessary and requisite papers; their opponents are contending with them. We think this adversary feature is a matter of some importance. In preparing the process we assume that they will investigate what the requisites are. If it is a summons, what are the requisites of a summons; is it properly entitled; is it properly directed to the defendant or to the sheriff; is it properly attested in the name of the judge, or signed by the clerk, or subscribed by the attorneys? Does it possess the requisites which the law of the jurisdiction under which the action is brought requires that it shall possess? Suppose the defendant is a corporation. In that case the process would be actually served upon one of the attorneys for defendant who would be assumed for this purpose to sustain such a relation to the defendant as to make him the proper party upon whom to make service as, for instance, its president. Suppose the return, as made, simply shows that it was made upon the defendant. Query. Should not the return show that service was made upon the defendant

by leaving a true copy with John Smith, its president? In short, has he followed the proper practice? Then, as to the pleadings they are attempted to be criticised both from the formal standpoint and from the standpoint of their legal sufficiency. We think, in the first place, it has a practical value because, to some extent, it brings the student for the first time face to face with something of an actual case. It possesses the adversary feature. He has at least the semblance of a court there. He is no longer reading *about* "process." He is actually writing out, serving and returning process. He is no longer studying *about* what a pleading shall contain, but he is endeavoring to *state* the cause of action. And so, on the part of the defendant, as to demurrers, pleas or answers, or whatever the particular pleading may be.

In our second course we give a class of cases that are called jury cases. Our practice here is to furnish actual cases. The attorneys, from the facts as arranged, are supposed to grasp what the cause of action is. The case is worked out in the presence of witnesses. Certain assumptions, of course, have to be indulged in, but once those assumptions are made, then the actual facts upon which the case is based are actually worked out. No statement is made as to what the cause of action may be or what the form of action shall be. The cases are actually arranged. Transactions may be carried on in different rooms at the same time. The witnesses who are there simply observe what is being transacted before them; they are simply testifying at the trial to what they have seen or heard. After the case has once been arranged then it is in the hands of the attorneys. They must consult their witnesses, and find out the facts, prepare their pleadings back and forth, until they have joined issue. When they have joined issue the case is docketed and it comes on for trial before a jury. Twenty-four men are subpoenaed each day to serve as jurors, and from them twelve are selected. After the jury is empanelled the case is stated by the attorney for the plaintiff as in actual procedure. Then the evidence is offered,

witnesses are sworn, examined and cross-examined, arguments are made to the jury, the court instructs the jury, and a verdict is rendered, and then the successful party is expected to go to the court records and enter the judgment.

Now we claim for this view of teaching practice that, in addition to its practical character, it gives a good opportunity for enforcing the knowledge of substantive law which the student has obtained, which can be given in no other way. To illustrate: the attorney for the plaintiff states his case to the jury. He makes his statement; he says nothing about his intention to prove some essential element of that particular action. He may be asked if he intends to prove nothing other than the facts stated by him. He may reply he does not. His opponent may be asked if, under the circumstances, he has any motion to make. He may reply that he has not. A suggestion may then be made as to the proper motion where one in his opening statement fails to state a *prima facie* case. I simply cite this as an instance that enables the one in charge to enforce the knowledge of the student in respect to substantive law in connection with instruction in practice.

As to the amount of time that Professor Redfield says he has found that different schools give to procedure, I have no knowledge. As I understand the paper, the statement was made that not more than one-tenth of the time is given to the teaching of procedure. In our school it amounts to much more than that.

H. S. Redfield :

I stated the time devoted to pleading and practice; I excluded evidence. I spoke of pleading and spoke of it as on the average.

T. A. Bogle :

I beg your pardon. That, of course, would make a difference. Now it seems to me that those who are opposed to the teaching of procedure are wrong in this. They seem to assume that unless we can be exhaustive in the teaching of practice we should not teach it at all. Of course it will be conceded

without argument that this is not possible. We cannot make old practitioners out of students. But it seems to me the question is this : shall the student, when he has completed his law course, leave the law school with some notion of practice commensurate with what he has been taught in substantive law ? Shall his knowledge of practice and procedure compare with his knowledge of substantive law ? Not that he is a finished practitioner. No claim is made that we can take the student over all the grounds of practice. My position is that he should, when he leaves the law school at the end of the three years' course, be able to take an ordinary case in the trial court, and go into the presence of the court and invoke its power. The question is : Shall anything be done in that direction ? It strikes me that something can be done. I think we can give him instruction in practice and procedure that shall, to some extent, equal the instruction that he has received in substantive law, and no further contention is made.

In the older days the students who left the law school left without any knowledge whatever of how to commence a law suit, and I think those of us who came to the practice from the office will never forget how little we knew about how to begin a law suit, although we may have read through the ordinary course that was required for a student in preparation for the bar ; but because one had never commenced a suit, had never issued a summons, had never made a motion, and had never examined a witness, it was all something that he knew absolutely nothing about.

I understand that it is conceded by both of the speakers that the primary purpose of the law school is to develop lawyers, to fit them for the practice of the law. Now if that be the primary purpose, how shall that purpose be accomplished if it is not worth while and is not possible to teach them anything about the thing which we expect them to do. Of course it is said, and with more or less force, that they should go out from the law school with enough discipline to do that in respect to which they have had no instruction. That is one test, I sup-

pose, whether a man has had discipline. When he meets a difficulty, can he solve it because of his discipline? And yet I can think of no more hopeless individual than one who goes to the court room to get a remedy and has no knowledge whatever about practice. He may be profound, he may understand the fundamental rules of law, he may know a good deal of international law and constitutional law, he may be a thorough scholar and thoroughly disciplined and scientific, but all these qualities will not of themselves enable him to make the proper motion in a court of justice for a remedy that he believes his client entitled to. Of course I admit that a man of that kind would acquire the practice. He could also become proficient in the substantive law without the aid of the law school. It seems to me that rule will work both ways.

I presume I have already taken up too much of your time, and in conclusion I simply wish to say that I do not want to be understood as making any claim that you can turn out old practitioners from the law school. I claim that it is practicable in the law school to give such instructions in respect to procedure and in respect to actual practice that the student's knowledge of those things may to some extent be commensurate with his knowledge of substantive law. The fact is that the students come to the law school, generally speaking, to be prepared for the practice of law. We have heard to-day from a man of experience in this state that there is no longer any opportunity to acquire that knowledge in the office. Now if a student cannot acquire that knowledge in the office, and if we are not to give it to him in the law school, where is he to acquire it? The answer is, I suppose, let him go out and acquire it himself. It seems to me that something may be done, and I believe that more attention should be given to the teaching of practice. The extent to which you carry it, of course, will depend upon the conditions existing in any particular school.

Edmund F. Trabue, of Kentucky:

I have not the honor of teaching law, but as I see the

teachers at issue, I feel licensed to speak. If Mr. Beale's position that the schools should teach only substantive law prevail, I should think the students would get only half learning. His suggestion that the lawyer's duties consist more in advising than in appearance in court seems to me directly against him, for such advice is given upon the assumption that the right in question is to be tested in court. There is a substantive right, and a remedial right, and it is of no moment to a client to know the substantive right without knowing his remedial right accruing upon infraction of his substantive right. Advice to corporations has been mentioned, but what is the substantive abstract right to the corporation without the remedial right. What it needs to know is what it can do and what it can be prevented from doing, and to know this it must know the remedial right and how it is to be pursued. For illustration, in my experience a railway company having a substantive right to condemn land inquires of us, through local attorneys, what the company's remedy is where the award has been made, the amount thereof paid and the consequent right of entry secured, but the land owner has, upon warrants for trespass, arrested the contractors. The substantive right to condemn is clear, but without injunction the corporation might nearly as well be without the substantive right. The important thing for it to know is how to vindicate that right and how to prevent its frustration. Again, the substantive right involved in another case is the right of lease of a railroad. The lessee seeks injunction and the lessor offers bond, which the court accepts. The lessor's counsel advises sureties that there is no liability on the bond, the bond is given and the litigation ends. It happened that with the injunction the lessee prevailed and without the injunction its position was of no value. The substantive right proved fruitless. Again, where substantive rights are different in different states, it is of vital importance to the corporation to know in which state and by what procedure it can be sued. Instances are *St. Clair vs. Cox*, declaring when the corporation can be

sued in a certain state ; and *Goldey vs. Morning News* declaring that a corporation's officer, casually in the state, cannot be served and the corporation held. Generally, details of practice, as the time of service before appearance, are immaterial, but five days' constructive service is held not to be due process. Also, a statute which converts an appearance for the sole purpose of questioning the jurisdiction into a general appearance is held in *York vs. Texas*, 137 U. S., not to violate the 14th Amendment of the United States Constitution. To comprehend, therefore, these vital questions of constitutional law, procedure must be studied. A student cannot know what is due process or due procedure without knowing procedure. It would seem to me, therefore, that substantive law and procedure must be studied together and that a man learning one only is only half learned. Please pardon, therefore, the suggestion that the theory of Professor Redfield seems nearer correct than Professor Beale's.

Samuel Williston, of Massachusetts :

Mr. Chairman and gentlemen of the Section : It was stated by Professor Redfield, and it seems to have been generally admitted subsequently in the discussion, that the business of a law school is to make lawyers. Possibly, a little ambiguity lurks in that phrase. It may mean that the business of a law school is to turn out a man who, at the end of his law school career, is able to go into court and carry through litigation competently. If that is what it means, I should certainly disagree with the statement. It does not seem to me that the proper function of a law school is to turn out that sort of a man. We want to get that sort of a man in the end, but I do not think a law school alone is competent to produce him. Fifty years ago it would hardly have been assumed, as it seems to have been here to-day, that, because the result is desirable, the law school is the place and the agency to do the work. The assumption I regard as unsound in regard to the particular matter with which we are dealing.

With many parts of adjective law, properly so-called, doubtless the law school is perfectly competent to deal, and questions

of legal principle are involved which not only teach the student the particular matter in question, but develop his mind and his reasoning power. What I mean may be made, perhaps, a little clearer by illustrations, and I will take one or two that have been suggested. So far as I know, every law school teaches the principles of jurisdiction over the person of a defendant by service, the law of injunctions, the principles of pleading and evidence; on the other hand, such questions as the dates within which appearances and answers must be made, or that formerly you could not get a judge after a certain hour on a Saturday evening, but that now you can if there is sufficient urgency for it—that sort of thing, it seems to me, is monstrous to teach in the law schools. Lord Coke said that by diligence a man may learn the common law, but the statutes never. The reason is that the statutes frequently contain no particular principle; it is a bare effort of memory. Lawyers in general, in regard to such matters, look them up in the statutes; they cannot burden their minds with rules of practice that they are not constantly using. Some such rules they are constantly using, and these fix themselves in the mind without effort. Others they acquire as they need them. It is possible in a law school for a man to become a profound lawyer in regard to substantive law. I venture the statement that most law students, as they graduate from the law schools, know more substantive law than they will know at any later period of their lives. I do not make this statement sarcastically. I mean it in sober earnest. The law schools can teach substantive law as it can be taught nowhere else. The three years a law student spends there are the years in which, in most cases, he does the only systematic study of the law he will ever do. Later he will learn to apply the knowledge he has acquired. He will learn practice. He cannot go into an office without learning it, and he will learn more of it in a day there than he can in a week of practice courses in a law school. The law school can teach substantive law better than the office, but precisely because the best way to learn to do any practical

thing is to go ahead and do it, the office can teach practice better than the law school.

It, therefore, seems to me that the suggestion merely thrown out in Mr. Danaher's paper, as to the proper method of legal education, with one slight amendment, is the best. He suggests two years of the law school and one year in an office. It seems to me it should be three years in a law school and one year in the office. In that way I think that a competent lawyer could be trained. I do not believe that real competence to practice can be attained in the law school, and the attempt to attain it involves too great a sacrifice of time, for the reasons that Professor Beale has suggested and which I will not repeat.

Frank Irvine, of New York :

I have been somewhat surprised to observe the trend of this discussion. I had supposed that after the experience of the law schools down to this time the question involved would be the degree of attention and the proportion of time which should be allotted to the study of practice, rather than the propriety of studying practice at all. I think it is true that it is not the purpose of a law school fully to fit men for the immediate practice of the law in all its branches, but if I know what men go to the law schools for, I believe it is the purpose of the law school, as they understand it, to fit them at least to begin the practice of the law, and that if the law school does not reasonably fit a man to begin the practice, the graduate may feel that it has obtained his tuition fees under a kind of false pretense.

If that be true, then we come to the particular question whether it is worth while, from the law school standpoint, to teach practice. It is said that it is not worth while, in the first place, because of the relative unimportance of the study ; in the second place, because the practice of each state is local and peculiar to that state and it is impracticable for the law school to teach the local practice of many jurisdictions, and, in the third place, that practice is unscientific and its study

has no value from the standpoint of discipline. If we accept Mr. Beale's idea of the main purpose of a law school it can hardly be stated without the use of the very term which enforces the notion of the relative importance of the study of procedure. The object of the law school is at least, I insist, to fit the student to begin the practice of the law. Now how can it do that unless it affords instruction in the "practice" of the law. While the substantive law is primary, it is only worked out through procedure. A client does not come to inquire as to his abstract rights. He desires a remedy, and he wants it quickly. If a man goes to a physician he does not care particularly for a diagnosis, except as it leads to the administration of a remedy. If a man goes to a lawyer he does not care for a statement of the curious situation in which he has placed himself, but he desires a remedy for the wrongs which he believes have been inflicted upon him, or which he thinks will be inflicted upon him. If I had a son I should hesitate to send him to a school of engineering which kept transits and other instruments out of sight because they were unscientific. If I were about to educate my son for a physician I should hesitate to send him to a medical college which put materia medica and surgery aside as unscientific. And I think the analogy holds true in the study of law. I think we should study the methods of our best technical schools in this respect.

The practice of the different states is, of course, largely different. Each state has to a large extent its own local practice, and it is impossible in a law school to teach all the details of the local practice of even one state. But running through them all there are certain general principles, which I insist can be induced from the whole body of the law, applicable not to one state alone, but to many, and by pursuing the method suggested by Professor Redfield, of accepting one state as a type and studying with some care the practice of that state, a man, if he does not entirely learn the practice even of that state, may at least learn how to learn the practice of that state and of any other to which he may go.

“Practice is unscientific.” True, our procedure is unscientific. It is the disgrace of the common law and of English-speaking nations that procedure is as unscientific as it remains. But should it be neglected for that reason? It is a fact, if it be unscientific. We must learn about it some time, and whatever of science there may be in procedure, whatever value there may be in the way of discipline, in grappling a difficult technical subject, may be acquired in the study of procedure. Moreover, the men in the law schools and the men who are to come out of them in coming years are the men who are to develop and reform our law in the future, and if procedure is ever to be made scientific we must look not to ourselves, but to those who in future years are to come out of the law schools to reduce it to a science. If the law schools, by devoting their undivided efforts for the next century to the study of procedure, could accomplish the result of establishing a simple scientific system of procedure they would, by that alone, justify their existence.

Simeon E. Baldwin, of Connecticut:

Is not the debate proceeding somewhat on a misunderstanding of an expression or two used by Professor Beale in his brief off-hand statement? He said, What is law? Law is one thing and the practice of the law is another.

But what is practice? Does it or does it not include the science of pleading, the law of evidence and a dozen other things that might be mentioned?

Pleading it certainly does. Would anyone say that the law of procedure, including pleading, is unscientific? I do not know of any book that I would sooner put in the hands of a young man in whom I wished to develop the faculty of discrimination than Gould's Pleading at the Common Law. I consider it a book fit to rank with any scientific treatise. I thoroughly believe in making common law pleadings a part of every system of law school instruction.

Are we not also forgetting that during the past forty years it has been true that cases have been studied as cases to a

greater extent than cases were studied by our grandfathers? The cases which they could study were not a handful compared to ours. And in studying a case, never mind why you study it,—perhaps to learn the law of wills, perhaps the law of corporations,—you are studying practice. Herbert Spencer said that the best part of any man's education was what he picked up for himself as he went along through the world. We pick up in reading cases practice necessarily, and practice in every variety of circumstances.

I think we should all agree that so far as legal procedure is to be taught it should be taught in a subsidiary way, and I think, on the other hand, that pleading must always be taught, and evidence, and that both must have a material portion of the attention of the instructor and student. I am inclined to think the proportion of time or opportunity now accorded in our law schools generally to the study of procedure has been underrated. In the Yale Law School, with which I am best acquainted, it is nearly double what has been stated as the general average, and I believe that one-tenth for our schools generally is much too low a figure.

Charles M. Hepburn, of Ohio:

There was one point in Mr. Beale's interesting remarks which especially engaged my attention, because it raised a question that I have had before me more or less for several years. Is it possible to teach modern statutory civil procedure fully and at the same time scientifically? Or, if we open the law school curriculum to a full course in civil procedure, must we do so only because of the practical importance of the subject? A few weeks ago I had the good fortune to run across the address of Judge Finch, as President of the New York State Bar Association last year, and I recall that Judge Finch was very clear in this address that the law schools must give more time to the teaching of civil procedure. He urged it upon the New York Bar as a matter of special and growing importance. In the same connection, however, he urged, no less forcibly, that the law schools must teach law as a science

and not as an art. But is it possible to teach civil procedure in its length and breadth as a science and not as an art?

There is, of course, no question that the leading principles of common law pleading can be so taught, but the point which I would emphasize is that the great body of our modern statutory civil procedure also can be taught as a science. It is possible to have, even in our much-abused code pleading, a reasonably complete course which shall be of a distinct scientific value in law school work. The argument in favor of an extensive course in modern civil procedure need not, I am sure, rest solely or mainly upon the practical importance to the law student of knowing how to do things as soon as he gets out of the law school. Take the principle of the one form of action, a principle common to all the code states and the most striking characteristic of the prevailing type of civil procedure in America and England; however great the importance of the one form of action to the practitioner, it is also true of it that few principles in substantive law afford a better opportunity for scientific legal training. So, in greater or less degree, of other leading principles which are characteristic of the present day statutory pleading in most of the states of the union—the principle of the general denial, the principle of the real party in interest, to take only two instances out of many. Certainly their study, when properly conducted, will go as far towards giving the student the trained mind of the lawyer as will many of the subjects of substantive law which appear in our law courses.

But I am inclined to go somewhat further than this. If we attempt to teach practice, strictly so-called, there are, of course, a good many arbitrary rules to be noticed. Yet a course in practice, such a course, at least, as appears to be included in Professor Redfield's course at Columbia, in Professor Bogle's course at Michigan, in Professor Irvine's course at Cornell, has, it seems to me, a scientific or educational value which is worth considering. It is true one cannot get in the mere practice course the same kind of training which may be had

from the study of cases developing fundamental legal principles, whether in substantive or adjective law. There is, no doubt, some danger that a practice course, strictly so-called, will run into mere rule of thumb work and be a waste of time for the law student. But in the hands of the instructor who knows his business, the practice course will not only be kept subordinate to the main purposes of a law school work in civil procedure, but will be made to furnish a close and exact drill in the application of legal principles, a drill of no little educational value.

The Chairman :

Is there any further discussion? If not, I will call upon the gentlemen who opened the discussion to close. First, I will ask Professor Beale to close the discussion on his side.

Joseph H. Beale, Jr.:

It seems to me to have been claimed, particularly by my friend, Mr. Irvine, that practice of the law is the going into court. Well, it may be in some cases. It is not in Boston. With us, the student when he first goes to the bar and begins the practice of the law, for which we have prepared him (we do not intend to prepare him merely to begin and then not go any further), he does not, as a rule, unless he is very unusually situated, try cases at the bar of any court. He begins his professional life by giving advice in an office—advice which, of course, requires a knowledge of such subjects as have been suggested, as whether there is a right of action, and what the right of action is, and so forth. Such things will be learned in connection with the substantive law, of course. You cannot teach the law of Contracts, for instance, without teaching about rights arising upon breach of contract and how such rights are enforced.

It is the mere details of going into court and practicing before the court which I meant to say did not seem to be as well worth the while of a teacher of law as the more scientific subjects of the law.

The Chairman :

I will call upon Professor Redfield to close the discussion on his side.

Henry S. Redfield :

I am forced to the conclusion that my paper must have been as vague as its title, otherwise I am sure Professor Beale would never have gained the idea that I was insisting that our schools should be turned over to the mere manufacture of men who knew certain details of court practice. What I do insist upon is that we must teach a scientific system of procedure, and that we can do it just as well under our present reformed system as we could under the common law and equity systems, and that one of the very reasons why we have so much confusion to-day is because men have gone out after simply picking up pleading and practice piecemeal without finding that the beginning of an action has a proper relation to the end of that action and that each step from the beginning to the end has some relation to every other step. As a matter of fact in the actual work which is done, attention to minor details of court practice is an infinitesimal part of the course. The thing I am after is, as Professor Bogle has said, at least to give the men some such knowledge of practice and pleading as is commensurate with their knowledge of substantive law.

The other arguments have been so well presented by Professor Irvine that I do not need to spend any time on them. In passing, I would simply say that the case which I referred to was not a case of election of remedies at all. The first action was an action of ejectment. Where you have a division of tribunals, that would have allowed the equitable remedy to be sought by a later action. It was not allowed here because, under the New York system, both remedies could have been obtained in the first action.

Charles W. Needham, of District of Columbia :

I am sorry that I missed the early part of the discussion on this question, but what I have heard is so able and instructive

that I feel we should not let the subject pass without endeavoring to gather some further facts bearing upon the question. I offer the following resolution :

Resolved, That the incoming administration make inquiry of Boards of Law Examiners in the more important states and ascertain, if possible, whether applicants for admission to the bar fail, to a larger degree, in their answers to questions upon adjective law than they do in their answers to questions upon substantive law.

I had occasion not long since to investigate this subject and found in the two cases that I investigated, that a greater part of the men who failed, failed for want of a proper knowledge of the subjects of practice and pleading. If this condition is general throughout the country or in the states which have the best system of examination, it would seem to indicate that there was a want of proper training in the law schools upon these subjects. If the object of the law school is to fit men to practice law, a three year course should put a man in position to pass a proper bar examination. I am very well aware that these examinations are not always properly conducted from the standpoint of the legal educator. Nevertheless, they must be passed by the student before he can commence his career, and if a greater proportion of failures are attributable to a want of knowledge of practice and pleading, then, in my judgment, such fact would indicate a want of proper training along these lines. In any event, the result of such an inquiry will be interesting.

Samuel Williston, of Massachusetts :

I have been a bar examiner in Suffolk County, Massachusetts, for a number of years, though I am not now, and I think that there is no doubt that Mr. Needham's information is correct, and that a very large proportion of failure is due to a lack of knowledge of adjective law procedure. I have talked with other bar examiners and I should be very much surprised if that was not the general experience. I may add, however,

that I do not think the consequence suggested necessarily follows.

F. M. Danaher, of New York :

Our experience is that if admission to the bar was predicated upon even a fair knowledge of pleading and practice that there would be but few accessions and that the older members would have but little additional competition during the next fifteen or twenty years.

Ninety per cent. of the students that we examine fail on pleading and practice; in one examination we had a class of 380, and but four knew how to draw an affidavit of merits, the majority had never heard of such an instrument.

Since the rules regulating admission to the bar in New York State have been amended so as to permit applicants to be admitted direct from the law schools without serving a law clerkship, the lack of knowledge on those important subjects is becoming painfully more apparent each year—the greatest amount of ignorance being shown by the law school graduates, and as the schools now supply about 80 per cent. of our applicants they owe the duty to the profession and to their pupils and to their pupils' future clients to give more attention in their courses to the subjects of pleading and practice.

The resolution offered by Mr. Needham was adopted.

The Chairman :

The report of the Committee on Nominations is next in order.

The Committee on Nominations reported recommending the election of George W. Kirchwey, of the Columbia Law School, as President, and Charles M. Hepburn, of the Cincinnati University Law School, as Secretary.

George W. Kirchwey, of New York :

Mr. President, I regret to be obliged to dissent from the report on very incontrovertible grounds. I regret that I am not a member of the American Bar Association. I am perfectly willing to declare my intention to become a member and to be

naturalized at the earliest opportunity, but I presume my lack of membership disqualifies me from accepting this honor at your hands.

The Chairman :

The Chair assumes that the declaration of intention on the part of the gentleman will be carried into effect to-morrow morning, which will be the earliest opportunity at which he can be elected a member of the American Bar Association, and that the Section will doubtless waive in the meantime the question of his eligibility. I may add that it is suggested by our Secretary that Mr. Kirchwey be elected a member of the American Bar Association *nunc pro tunc* in order to avoid any constitutional complications.

On motion, the report of the Committee on Nominations was adopted and made the action of the Section, and the gentlemen named were declared the duly elected officers of the Section for the ensuing year.

The Section then adjourned *sine die*.

CHARLES M. HEPBURN,
Secretary.

A DECADE OF PROGRESS IN LEGAL EDUCATION.

ADDRESS BY

ERNEST W. HUFFCUT,
OF CORNELL UNIVERSITY COLLEGE OF LAW,
As Chairman of the Section of Legal Education.

At this, the tenth annual meeting of the Section of Legal Education, the occasion seems a fitting one to review the work and progress of the past decade. In August, 1892, a committee composed of James Bradley Thayer, Simeon E. Baldwin, William G. Hammond, Ed. Baxter and George M. Sharp, was appointed to prepare plans and issue invitations for a general meeting of those interested in legal education. The committee acted with vigor and despatch, and at the annual meeting of the American Bar Association in August, 1893, this Section was organized and a program presented with papers by Austin Abbott, Emlin McClain and Samuel Williston. At that meeting, Henry Wade Rogers was elected Chairman of the Section and George M. Sharp, Secretary. The Chair has since been occupied by James B. Thayer, Emlin McClain, Edward J. Phelps, Simeon E. Baldwin, William Wirt Howe, Charles Noble Gregory and H. B. Hutchins. Mr. Sharp served as Secretary until 1901 and the marked success of the Section has been due in large degree to his untiring and efficient services.

Of those who helped to organize and carry on the work of the Section, some, alas, are no longer with us. William G. Hammond, who was on the Committee of Organization and took a leading part in the work of the first annual meeting, died before the second annual meeting convened in 1894. Austin Abbott, who also took a prominent part in the work of organization and read a most valuable paper at the first annual

meeting and was thereafter until his death a regular attendant, had also gone from us before the fourth annual meeting in 1896.

Since our last meeting, one who was Chairman of the Committee on Organization, Chairman of the Section in 1895, and a regular and contributing attendant at our meetings, has also laid down his work. The world and we are incalculably the poorer for the loss of this great and finished scholar, this true and gracious gentleman. James Bradley Thayer will be long and gratefully remembered by a large body of students who for nearly thirty years profited by his teaching and example, by an increasing body of teachers who have received and shall receive encouragement and inspiration from the ripe products of his strong and penetrating intellect, and by all students of the law everywhere who admire genuine scholarship combined with unaffected generosity, urbanity and modesty.

In viewing the present state of legal education we may first naturally inquire how many law schools are in existence in the United States and how many students are in attendance upon them. Only an approximately correct answer can be made to that inquiry. A publishing house has recently put forth a list showing 104 law schools; to this number must be added at least four other schools whose catalogues I have recently examined, while as late as 1899-1900, twelve other schools were listed by the Commissioner of Education, although his entire list for that year numbered but ninety-six. It may be that there are now as many as 115 or 120 law schools in the country, but repeated requests for catalogues and information have brought but ninety-eight replies and these schools show for 1901-02 a total enrollment of upwards of 14,000 students.¹

¹ In two instances the number enrolled for the preceding year was taken in the absence of later information, and two schools in the list open next fall for the first time. To this total must be added the attendance at the fifteen or twenty schools from which no replies were received; but most, or all of these, are small schools and, all combined, would probably not add more than two or three hundred to the result. The report of the Commissioner of Education for 1899-1900 shows ninety-six schools with a total

When it is considered that the last census disclosed that there were already in 1900 over 114,000 lawyers in the United States,—more than in any other profession save medicine and teaching,—it will be seen with astonishment, and perhaps dismay, that the schools last year had in course of preparation about one-eighth as many more. New York City is credited with about 8000 lawyers, and yet the New York City schools had 2000 law students in attendance last year. The enrollment in a single school near Boston exceeded two-thirds the number of practitioners in that city, and the enrollment in all the schools in and near Boston exceeded the total number of practitioners in that New England metropolis. The total number enrolled in all the schools was about equal to the total number of lawyers credited to the three largest cities of the United States, and probably exceeded the number in active practice. And yet, startling as these figures may seem, it must be remembered that assuming that 3500 students, or one-fourth of the total enrollment, were graduated each year, it would, at this rate, take about thirty-three years, or a full generation, to replace the more than 114,000 lawyers now credited to the profession.

What is really startling is the rapid increase in the number in attendance at the schools and the evidences that this is likely to continue. In 1891-92, ten years ago, the Report of the Commissioner of Education listed 58 schools, with a total attendance of 6073.¹ Even allowing for failure in that year to list all the schools, it is reasonably certain that the number of schools has nearly doubled and the number of students has considerably more than doubled during the past ten years. The only states not credited with at least one law school are New Hampshire, Vermont, New Jersey and Delaware in the attendance of 12,516. Among the ninety-six are eight schools from which I received no reply, but these had a total attendance of only ninety-nine, and of this number sixty-five were in two schools, leaving but thirty-four students distributed among the remaining six.

¹ In 1889-90 there were 72 law school students to every million of population; in 1899-1900 there were 166 to every million.

East, and Wyoming, Montana, Idaho, Utah and Nevada in the West. One state is credited with as many as ten schools, and six (including the District of Columbia) have from five to nine each. Evidently the opportunity for some sort of legal education is not to be denied to those who seek it.

It may, indeed, be questionable whether this increase in the number of schools is altogether an advantage. Many of these institutions are among the ephemera of the educational world. Of the 72 schools enumerated by our Chairman (Henry Wade Rogers) in 1894, 15 are not to be found in the list of 104 issued by a publishing house in 1902. Probably most of these have run their brief career and died of anæmia; possibly some are so obscure as to escape even the eager search of the law-book seller. But in any event it is obvious that the multiplication of schools, especially schools having no adequate endowment or facilities, is not an unmixed blessing. Even if each new school were adequately endowed and equipped there would still be a questionable waste in planting a second, or, as in some cases, a third, fourth or fifth school in a territory already adequately served by existing institutions of the same rank. In all New England, New York, Pennsylvania and New Jersey, with a total population of over twenty-one millions, there are but eighteen law schools, or one to every twelve hundred thousand of population, and these schools have a total attendance of over forty-seven hundred students. In Indiana and Illinois alone, with a population of less than seven and a half millions, there are also eighteen law schools, or one to about every four hundred thousand of population, and these schools have a total attendance of only about two thousand students. In Ohio, Indiana, Illinois, Kentucky and Tennessee, with a population of less than sixteen millions, there are thirty-nine schools, and these schools have a total attendance of about four thousand students. Probably Tennessee is most amply served of all, with one school to every two hundred and twenty-five thousand of population, unless we except the Dis-

trict of Columbia with one school to every forty-seven thousand.

The evils of this system of multiplication have not escaped the observation of our foreign critics. In his report to the French government, the delegate to our Columbian Exposition from the French Ministry of Public Instruction (Dr. Gabriel Compayré), in commenting upon the statistics for 1889-1890, says :

“ If we reflect that there are fifty-two law schools in the United States, it is not necessary to consult statistics to learn how prejudicial this excessive dissemination is to the study of law, there being neither a sufficient number of capable professors nor of students to constitute solid and vital centres of instruction. [The statistics quoted show that the number of students ranged from one to nearly 500, and the professors from one to twenty-three.] Harvard and Yale had only 153 and 106 students, respectively, while there is no law school at Johns Hopkins, or Princeton, or Clark University. . . . We cannot too often repeat that, sustained by their enormous wealth, the Americans give themselves over to a veritable waste of forces. They commit follies in the way of education. Carried away by local pride, or, rather, to speak more accurately, moved by the legitimate desire to put higher education within reach of the young in as many places as possible, they increase the number of foundations of the same kind without caring for doubling the expenditure of money for the same purpose or disturbing themselves about competition, so that it often happens that their costly institutions, which have been established under unfavorable conditions on an unfruitful soil, languish painfully and only make a problematical success. But how could it be otherwise when we find three or four schools of law or medicine, not only in the same region, but in the same city.”¹

If these observations were called forth by the statistics showing but fifty-two schools, what might not have been added

¹ See report of the Commissioner of Education for 1895-96, p. 1155.

had the critic been called upon to deal with statistics showing over twice that number and the process of germination apparently far from exhausted? It is to be feared, moreover, that some of these schools have come into existence without any substantial foundation or endowment which enables them to be indifferent to competition. It is noticeable that a considerable number of the schools established during the past few years have been proprietary institutions, while most of those that have disappeared have been of the same class. One enterprising promotor has, I believe, established not less than four schools within a comparatively short time, and has not confined the blessings of his degrees to those who have found it convenient to go into residence.

If we turn now from the question of quantity to that of quality, I think we shall find much of encouragement. Three points may fairly be considered in this connection: First, the character of the entrance requirement; second, the length of the course of study leading to the degree; and third, the equipment and facilities for satisfactory study and instruction.

As late as 1894-95, the Commissioner of Education stated that of the sixty law school catalogues examined by him there were forty-three which showed that practically no entrance requirements were exacted. This was somewhat over one-half of all the schools then in operation. I have carefully examined ninety-eight catalogues this year and, while there is great diversity of statement and of requirement, I find that the schools may be roughly grouped in respect of entrance requirements into five classes.

The first class comprises those which either frankly state that no entrance requirements are exacted or in vague phrase speak of "satisfying the faculty that the previous education is such as will justify the student in entering upon his legal studies," or that a "fair English education is required," or the like. Of these schools there are forty-three, somewhat less than one-half of the whole number examined. Of these, fifteen have a three years' course, twenty-four a two years'

course and four a one year course. I am not sure that some others ought not to be included in this class, but I have preferred to include all doubtful cases in the highest class to which they can by any sort of indulgence be assigned. Some schools, while requiring a fixed and satisfactory test for the larger part of their students, admit, without any test, persons who have anywhere been admitted to the bar or have anywhere received a law degree. It is notorious that in some states persons are admitted to the bar without any evidence of non-professional education and in some without any evidence of either professional or non-professional education, while the fact that over forty schools have no entrance requirements whatever, indicates that to admit their graduates without examination to a school having entrance requirements is for that school to lapse from its own excellent standards. But these deviations from the normal requirements have also been ignored in this grouping of the schools.

The second class is made up of those schools which admit upon certificates or examinations that may fairly be regarded as exacting substantially less than an ordinary high school course of the state in which they are located. I admit the difficulty of appraising this matter with certainty and I have given the benefit of the doubt in every case that appeared at all doubtful. This process of elimination leaves but four schools in this group, and one of these announces that in 1903 it will exact a full high school education. Of these schools three have a two years' course and one a three years' course.

The third group comprises schools which state that the student in order to obtain a degree must present, at the least, a high school diploma or its equivalent. Of this class there are 44, but of the 44 there are 15 that make no mention of the nature of the equivalent, and we, like the student applicant, must remain somewhat in the dark as to the exact requirements. The remaining 29 state the exact nature of the examination required in lieu of the certificate of high school graduation. Of these some, notably the Illinois schools, base

the requirement upon the requirements for admission to the bar; some state the exact subjects in which the student will be examined, and, while these subjects vary considerably, they generally cover English, English and American History, Algebra, Plane and Solid Geometry, and either Latin or one or more modern languages. Some, indeed, require less than this and some require more, but the general average is, perhaps, the equivalent of three years' of high school work. Out of the 29 that state specific requirements, 12 require, in lieu of the presentation of a high school diploma, the same examination as is required for admission to the freshman class in arts or science in the university of which they are a part. This seems a reasonable and convenient method of solving the problem for schools which are integral parts of a university and puts the school beyond all suspicion of requiring less than the average high school course. Surely a student of law ought to be as well prepared as a college freshman, and certainly the examiners for the university are better qualified to test the non-professional education of an applicant than the professors of law who might, perhaps, have difficulty themselves in passing all of the usual entrance examinations. Now that there is an inter-collegiate board of examiners holding college entrance examinations at numerous points throughout the country, it would be easy for law schools to send applicants to these examinations and thus insure both experience and impartiality in the examiners.¹ Whatever course is adopted it certainly seems reasonable to expect that schools will state specifically the subjects in which students will be examined and, in general, that these shall equal the requirements for admission to the freshman class in a college of good standing. Of this group, 34 have a three years' course, 9 a two years' course and one a three years' course for non-college graduates and a two years' course for college graduates.

¹ For information as to these examinations, application may be made to the Secretary of the College Entrance Examination Board, Sub-station 84, New York City.

The fourth class comprises schools which require more than a high school education and less than a full college education as a prerequisite to obtaining the degree in law. There seem to be three schools in this class, each apparently requiring that the student should, before taking his law degree, be fitted to enter the junior class in a regular college course. The clearest statement and, indeed, a model statement, is that of the Ohio State University which exacts not only an examination equal to that required for admission to the college courses but also the equivalent (specifically stated) of two years of college work in arts, philosophy or science. It also requires a three years' course. A somewhat similar statement appears in the catalogues of the North Carolina University and the West Virginia University, although the latter seems to have a minor degree of "Graduate in Law" for those who do not meet this requirement, and each requires but two years of law work. The compromise effected by these schools and especially the admirable plan so clearly stated by the Ohio State University, may be heartily commended to those legal educators who, while feeling that the exaction of a college degree is too severe, are convinced at the same time that the minimum requirement of high school graduation is too low. If universities and colleges, following the suggestion, and I understand the practice, of the Chicago University authorities, would grant some sort of a minor degree at the end of the sophomore year, this standard for admission to professional schools would be more easily administered and would, I am convinced, be adopted by a considerable number of law schools.

The fifth class comprises those schools that grant the law degree only to persons who already possess a college baccalaureate degree, and only after the completion of a three years' course. There are at present three, and possibly four, schools in this class. Harvard normally exacts the college degree as a condition of admission as a candidate for a law degree, although it appears that special students admitted upon an examination in Blackstone, French and Latin, or after the

completion of a three years' course in another law school, may, if they pass the law examinations with high credit, receive the degree of Bachelor of Laws. Stanford also exacts a baccalaureate college degree as a condition of obtaining the law degree, although students may begin the study of law while still undergraduates and special students are given the law degree if they complete the work with distinguished excellence. The Chicago University, which opens its law school next fall, will, if I understand correctly its announcements, confer its regular degree of Doctor of Law (J. D.) only upon those who already have a college baccalaureate degree, although, I confess, I am not quite clear as to its exact requirements. The Catholic University nominally requires a baccalaureate degree, or its equivalent, for admission, but includes a degree in theology, medicine or law and also admits members of the bar upon equal terms. It is quite obvious that these diverse requirements are not equal to those of the other schools in this class and that this school stands, therefore, in a somewhat anomalous position. It grants, however, the degree of Doctor of Law (J. D.) as if it were exclusively a graduate school. Columbia University will, in and after 1903, normally require the college degree for admission, although it also announces that it will accept an equivalent. It is hardly to be expected that this group will be much enlarged in the near future.

Geographically considered, the schools requiring at least a high school course are, with five exceptions, in the north (including the District of Columbia) and the west. On the other hand, of the sixty-eight schools of the northern and western states and the District of Columbia, whose catalogues I have examined, over twenty have no entrance requirements or only those vague requirements of "satisfying the faculty" which, we all understand, are not to be interpreted as interposing any serious obstacle to aspiring applicants.

The lengthening of the course of study to three years has progressed rapidly during the past decade. In 1894 our

Chairman (Henry Wade Rogers) stated that "the large majority of the schools prescribe a two years' course for the Bachelor's degree," and that "a small but gradually increasing number of the schools have established a three years' course as a qualification for the Bachelor's degree." At that time he listed but eight schools having a three years' course. To-day the situation is completely reversed. Out of 98 schools whose catalogues I have examined, 56 have a three years' course,¹ 38 a two years' course and 4 a one year course. One or two schools grouped with those requiring two years have a suggestive reference to the possibility of especially able students completing both years' work in one year, but following the plan of resolving doubtful cases in favor of the highest standard advertised, I have ignored this element in the computations. The tendency to require three years of law study as a prerequisite to a degree seems to be the most significant feature in the progress of legal education during the past decade.

Of the 98 schools listed by me, 68 are in the northern and western states and the District of Columbia; of this number, 51 have a three years' course and only 17 a two years' course, and of the 17, six are in Indiana and five in New York. In the remaining 13 southern states there are 30 schools listed, and of this number only five have a three years' course, while 21 have a two years' course and four a one year course. It is obvious that the conditions in the South are not yet wholly favorable to the exaction of any specific standard of entrance requirement or to the lengthening of the course, but we are assured that our brethren there are hastening the advance in requirements for admission and length of course as fast as the general educational work of the preparatory schools and the provisions for admission to the bar will warrant.

The material equipment of some of the schools is highly satisfactory. A very respectable number have beautiful and commodious buildings erected or adapted for their exclusive

¹ One or two evening schools require four years for graduation.

use and several of these buildings have cost more than one hundred thousand dollars. Others are satisfactorily housed in university buildings used in common with other departments. Still others occupy adequate quarters in city office buildings.

In the matter of library facilities, while there is still much to be desired, several schools are now very adequately equipped and the progress in this direction is encouraging. From all the sources of information available I estimate that there are now twenty-five schools possessing libraries exceeding five thousand volumes each, and of these there are twelve that number from five to ten thousand, nine that number from ten to twenty thousand, one from twenty to thirty thousand, two from thirty to forty thousand, and one upwards of sixty thousand. In 1894 our Chairman was able to name but six schools whose libraries exceeded five thousand volumes.

It is difficult, if not impossible, to ascertain the exact number of teachers actually giving regular instruction. Many schools print lists of twenty, thirty and occasionally forty professors and lecturers, but it is probable that a large part of these are mainly ornamental. One school, for example, has more professors and lecturers than students, and it is frequently observable that the number of students is in inverse proportion to the number of teachers. The report of the Commissioner of Education for 1899-1900 gave 580 professors and 424 special assistant instructors, or one to every twelve or thirteen students. In the older schools or those that command the exclusive, or practically exclusive, services of professors, the number of teachers is comparatively small. It is obvious that in a school giving (say) forty or forty-five hours of classroom work per week, five or six teachers devoting all their time to the work are sufficient, while twice that number may be necessary in case the teacher is otherwise actively engaged.

It is difficult to ascertain the number of professors who give their exclusive time to law teaching, but such information as is obtainable leads to the belief that the number is steadily increasing. In schools which are organically connected with

universities or are substantially endowed, the tendency seems to be to secure the exclusive services of law teachers and to call in practitioners or judges for brief courses on special topics. In many schools it is impossible, for lack of funds, to command the exclusive time of teachers.

The question of methods of instruction, or more properly, the question of methods of study, still involves many diverse and interesting features. Aside from the exclusive lecture system, of which I find but four examples, two extremes present themselves, namely, the practically exclusive use of cases as the material for study and class-room discussion and the practically exclusive use of text-books for the same purpose. Eliminating all those schools which profess to combine these methods,—but some of which, nevertheless, really seem from their choice of texts to incline strongly to one extreme or the other,—there appear to be twelve schools that unequivocally adopt the case system and thirty-four that unequivocally adopt the text-book system or the text-book and lecture system. Fifteen others announce the use for regular study and discussion of both texts and cases in varying degrees, while the remaining thirty-three announce that they have combined the best features of the case system, the text-book system and the lecture system. Many schools seem to think it necessary to explain in great detail the reasons for the adoption of a practically exclusive method or for the combination of varying methods, and this fact is, perhaps, evidence enough that the law school world is still in some ferment over the system introduced by Professor Langdell more than thirty years ago. It is plain, however, that that method has made great headway, and even where it is not exclusively employed, it has affected, in some degree, often in a large degree, the methods of study and instruction. The divergencies in some schools in the extent to which it is combined with the regular use of text-books mark not so much a difference in the pedagogical theory of teachers, as a difference in the capacity and discipline of students. There is doubt in some quarters

whether first-year students fresh from the high schools can as profitably grapple with case-books alone as with case-books supplemented with elementary text-books. Had all students the discipline, capacity and maturity of the average junior in a college of liberal arts it is probable that the case-books would more largely supplant the text-books even for regular first-year work.

A striking feature of law school work which has made great headway during the past few years is the extent to which the regular teaching of procedural law has been introduced into the curriculum. Fortunately we are to have the advantage of listening to-day to a paper and a discussion upon this subject and I need not, therefore, do more than mention, in passing, this interesting development of a neglected topic.

In this hasty review of the progress in legal education during the period that measures the life of this Section, we note, first, a moderate but substantial advance in the requirements as to preliminary education; second, a rapid advance in the lengthening of the course of study to three years; third, a considerable strengthening of material equipment, and fourth, a revived, and, to some extent, chastened spirit of inquiry as to the best methods of arranging and conducting law school work.

It would be interesting to inquire, did time permit, why there has been so much readiness to increase the length of the course of study and so much reluctance to raise the standards for admission. Without entering to any extent into that inquiry, I venture the suggestion that this is in large part due to the fact that lengthening the course of study has, after the first year or two, no appreciable effect upon the attendance, while any substantial increase in entrance requirements is likely to result for some years in a considerable decrease of numbers. Experience seems to show that a school adopting both measures will eventually more than regain its former numbers, but it is only those not dependent upon numbers for their income that can in all cases afford to take both steps at

or near the same time. So many schools have now adopted the three years' course that we may, during the next decade, expect to see those same schools make a substantial and strictly enforced increase in entrance requirements. Having fully recovered from the effects of the lengthened course of study, they will be in a position to take with comparative safety the next step in the elevation of their standards.

We have, then, a well-grounded satisfaction in the progress of the past decade and may fairly take increased encouragement for the future. It is not too much to say that a large measure of all that has been accomplished has been due to the work of this Section. Our first Chairman expressed the "conviction that the cause of legal education in the United States will be much promoted and advanced by the creation of this Section." That conviction has been fully justified by the event. Here, year after year, those interested in legal education have gathered from all parts of the country and even from foreign lands for that friendly comparison of ideas and interchange of views that constitute the true value of human intercourse. We have returned to our work with new ideals and new inspiration gathered from the common stock. The best that has been said upon legal education during the past ten years has been said here, and the history of the progress of legal education during that time must be sought in the proceedings of this Section. After ten years of work we may well feel satisfaction in the thought that if the progress has not been all that we could have wished, it has, nevertheless, been far more than those who organized the Section could have dared to hope and that it is but the beginning of what shall yet be.

I venture to repeat for the next decade the conviction uttered by our first Chairman at our first annual meeting. For, be it understood, the work of the Section is far from finished, if, indeed, it will ever be finished. It must continue, as heretofore, to bring together annually those legal educators and active practitioners into whose hands is committed the educa-

tion of the future members of our profession and therewith the honor and usefulness of that profession. The teacher's mission is among the noblest confided to man, and when it involves the training of those who are to administer the laws of our country, it becomes doubly ennobled. It is our part to hold fast all that we have thus far gained and to make renewed progress toward the elevation of the standards and ideals of legal education.

A DEFECT IN LEGAL EDUCATION.

BY

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Whatever differences of opinion may exist as to the subjects which should be included in the curriculum, or the order and relative importance of subjects, or other minor details, it is believed that there is practical accord among educators in the opinion that the primary function of any professional school is to fit students for the practice of the profession for which that school stands. It may perform other functions, but this must, in no event, be neglected.

Law schools may properly offer to their advanced or graduate students courses calculated to develop jurists or statesmen, and schools connected with the universities do not, perhaps, fully perform their duty if they fail to provide opportunities for studies of this character, but any law school, to justify completely its existence, must give instruction which, if faithfully followed, will develop lawyers.

Assuming, then, that there is substantial agreement upon this point, it is the aim of the present paper to show that instruction of the character indicated cannot be successfully given, nor can qualified lawyers be graduated from our schools, while an entire division of the law is relegated to a position in the curriculum so comparatively insignificant as to impress the student, at the very beginning of his professional studies, with its lack of importance in the judgment of those by whom he is to be guided.

The intimate and, indeed, vital relation existing between substantive and adjective law in early times is now universally recognized, and there is no need in this place of quoting the words of such scholars as Sir Henry Maine, Pollock, Mait-

land, Holmes and others to make clear the one conclusion which has been reached by those who have given the subject special study.

Strangely, however, it seems to be assumed—judging, at least, from the catalogues of the law schools—that no such vital and intimate relation exists or can exist to-day; that no modification in pleading and practice either by statute, rule or decision will or can modify any rule of substantive law, or make that which has been a legal right, because there was a remedy for it, any less a legal right.

It is submitted that such absolute divorce of substantive from adjective law is no more possible now than it was in the early days. With the exception of the rare cases in which “self help” is available, any rule of substantive law, in order to be practically effective, must be enforced by duly constituted courts with defined powers conducting proceedings by prescribed methods; and changes in the constitution and powers of the courts, or essential changes in the methods, must affect the rule of substantive law.

To illustrate, let us first take an instance of direct statutory change. An act is threatened of such a nature as to entitle a client to a preliminary injunction. He learns of it about midnight Saturday, and that the act is to be committed on Sunday. In most jurisdictions the client must be advised that such process cannot be obtained or served on Sunday, and the rule of substantive law is, therefore, as to him, in this particular instance, valueless.

In an article of the New York Code of Civil Procedure relating to the “General Powers and Attributes of the Courts,” will be found a section which declares that “A court shall not be opened or transact any business on Sunday, except to receive a verdict or discharge a jury. An adjournment of a court on Saturday, unless made after a cause has been committed to a jury, must be to some other day than Sunday. But this Section does not prevent the exercise of the jurisdiction of a magistrate where it is necessary to preserve the peace,

or in a criminal case to arrest, commit, or discharge a person charged with an offense."

So far we have, substantially, a statutory enactment of the existing law, but, by an amendment passed in 1900, it is further provided that the Section does not prevent "the granting of an injunction order by a justice of the Supreme Court when, in his judgment, it is necessary to prevent irremediable injury, or the service of a summons with or without a complaint, if accompanied by an injunction order and an order of such justice, permitting service on that day."

Here is an amendment which, on its face, simply regulates the exercise of power by a judicial officer of a specified court, and the service of process, but its practical effect upon the rule of law relating to injunctions is too obvious to need comment.

A second illustration is furnished by the recent case of *Hall vs. Sugo* (169 N. Y. 109), decided in December, 1901. Here the change rests, indeed, upon the statutory adoption of the reformed procedure and the granting of jurisdiction in both law and equity to the Supreme Court, but it is declared and becomes effective as the law of the state, by reason of the decision of the Court of Appeals.

The suit was brought to obtain a decree to compel the defendant to remove that portion of the wall of her building which encroached upon the lands of the plaintiffs'. A prior action to recover possession of the strip of land upon which this portion of the wall was erected, had been brought and had resulted in a verdict for the plaintiffs and a judgment establishing their title in fee to the premises and their right to the possession thereof. An execution in the usual form for such cases had been issued to the sheriff and returned by him with an endorsement thereon "stating in substance that the strip of land described therein was occupied by a portion of the stone foundation and brick wall of defendant's house and that it was impracticable for him to remove the same."

Thereafter the action in equity was brought to compel the defendant to remove said encroaching wall and the Court of Appeals, with a single dissenting voice, reversing the judgment of the Appellate Division, held that the action could not be maintained. "The appeal to this court," it is said, "brings up the question whether two separate actions can be maintained upon a single cause of action."

Briefly stated, the reasoning was as follows: Under the reformed procedure, full relief may be granted in accordance with the facts alleged in the pleadings and proved, whether that relief is legal or equitable, or both. In the case at bar there is one primary right invaded and one wrong done by the defendant involving that right. There is, therefore, but a single cause of action, no matter to how many forms and kinds of relief plaintiffs may be entitled. The right to the possession involved the removal of the encroaching wall, and if the complaint in the first action had contained the proper allegations to make clear the necessity of the removal and the allegations had been supported by proof, full relief could and would have been granted in that action. It was plaintiffs' own fault that such allegations and proof were not presented, and the judgment entered must be considered a final disposition of the questions at issue, or which might have been put at issue.

As stated by the court, "The fact that plaintiffs' complaint lacked the averments which would have apprised the court of their right to equitable relief, and that the course of the trial furnished no indication that they intended to claim such relief, is no excuse for the commencement of a separate and independent action upon the single cause involved in the first action."

That the second action in equity would have been maintainable under the old procedure, or under any system, where law and equity are administered by different tribunals, is beyond question, and that encroaching wall, which, so far as the courts are concerned, still wrongfully stands in the city of Buffalo, is

striking evidence that the intimate connection between adjective and substantive law has not yet been severed.

Without multiplying illustrations, it is claimed that this connection does and must continue and that, because of such connection, a law school curriculum which gives a very small place to adjective law is not properly or scientifically constructed, irrespective of the necessity from a utilitarian standpoint of an education in pleading and practice, which is something more than nominal.

Again, if we disregard this connection which, of itself, dictates that courses in procedure should have full recognition, and start merely with the broad proposition that the selection of subjects must be controlled by their disciplinary or scientific and not by their practical value, we are still led to the conclusion that the subject of procedure deserves a greater amount of consideration than it is receiving.

But little time can be spent upon this point and I cannot do better than quote the words of Chancellor McClain as contained in the address on "The Law Curriculum" which he delivered as Chairman of the Section of Legal Education in 1896.

After stating that in preparing a course of instruction, he did not "hesitate to insist most strongly on considering each subject from the standpoint of its scientific rather than its immediately practical value," and after giving illustrations of subjects he would select upon this theory, he said:

"From these illustrations it will be apparent that in drawing this distinction between matter which is scientifically important and that which is of no significance excepting as matter of information, it will not be safe to put the substantive law on one side and the adjective law on the other.

"There is, perhaps, in no branch of the law greater need of scientific analysis and careful synthesis than in the subject of pleading, evidence and practice. The rock upon which the whole fabric of the law, as a harmonious structure, is in danger of going to pieces is the lack of real knowledge on the

part of the practitioners in regard to these practical subjects. I do not say that the introduction of codes of pleading and procedure has brought about this result. On the contrary I am inclined to think that the artificialities of the common law and equity systems of pleading lie at the foundation of the trouble. The real difficulty is the effort on the part of those who have not been well grounded in the principles of the law to practice it by some mere rule of art. They have sought to follow forms of procedure in matters that could only be solved by principle."

He then called attention to the very large number of cases in our appellate tribunals and continued :

"The courts from which the appeals are taken are largely responsible for the amount of work which is thrown upon the appellate court, and the defect is primarily a defect in the systematic and uniform training of those who practice in these trial courts. And, if this is a correct view, then it is of the utmost importance that the law school shall give to this matter of pleading and practice systematic attention in order that there may be more thorough and scientific knowledge as to the principles of procedure."

To these words little need be added. I believe that they are true; that their truth will be fully demonstrated to anyone making a careful and candid investigation of the facts, or even one that is superficial; and that the truth is one that needs frequent and forceful emphasis.

If now, in addition to the foregoing reasons, assuming, as we have, that the function of the law school is to equip students for their professional activities, we concede, as we must, that such equipment is not complete until the student knows how to make his knowledge of the substantive law practically effective for his clients; what action should be brought for the enforcement of a given right; in what court; how it may be commenced and prosecuted to judgment; and how the judgment, when obtained, may be enforced, the argument seems to be conclusive for giving pleading and practice

something more than an insignificant place in the curriculum.

The complaints from the bar that the schools have failed in this respect have been many and well founded.

The common answer is, "These subjects, from their nature, cannot be successfully taught in the schools. The only place in which the student can acquire this knowledge is in the office. If the boy is to learn to swim, he must be thrown into the water." I venture the assertion that better, more expert, more enduring swimmers, on the average, have been turned out of good swimming schools, where their training was in a small and an artificial pool, than have been produced by the method of throwing the boy overboard from a boat into the deep waters of Lake Superior or Long Island Sound; and after nineteen years of experience and observation at the bar, I believe not only that pleading and practice can be taught in the law school, but that it is the one place where it can be properly taught.

Do not misunderstand me. I am not minimizing the value of the practical details with which one only gains familiarity in an office, or denying that facility in many matters must be acquired there and in the courts, or that actual experience in office and court has developed the majority of our present practitioners, many of whom are lawyers whom our students may be proud to equal. Nevertheless, under present conditions, the procedural training—if it can be called training—which the student receives in a vast majority of the law offices is necessarily deficient in the very respects indicated by the words which I have quoted from Chancellor McClain. What the student learns is not pleading and practice, but unrelated scraps of pleading and practice. He may finally pick up all the fragments, but they are still fragments, and not related parts of a whole; and, as one result, the courts are spending needless time in passing upon questions of procedure, which should never have arisen.

In 1894 there was reported to this Section the result of an examination of the General Digest for 1893 of cases decided

in the United States and Canada, showing that nearly one-half of the questions decided by the courts having appellate jurisdiction were "questions arising out of disputes as to the proper methods of bringing before the courts the merits involved in the original differences."

Commenting upon this report, two years later, Prof. Blewett Lee forcefully said: "As a profession we stand condemned by these figures. They mean that in half the cases the lawyers of the country try, they do not know how to bring before the court the merits of the causes." As already indicated, my own belief is that the remedy for this unfortunate condition can be furnished by the law schools; that they can and must give instruction in pleading and practice, and that such instruction should, indeed, be practical, but must be thorough and systematic. That there are difficulties in giving such instruction cannot be questioned and possibly longer experience may convince me that they are greater than they now appear, but I do not believe that they will prove insurmountable. It is certain, however, that while very much may be accomplished, even under existing conditions, no course, of the character specified, can be made complete and adequate in the time now allotted to the work.

An examination of the catalogues of forty-five law schools shows that it is impossible to make an accurate summary of the character of the work done in this department, or of the time devoted to it, but such examination does justify the statement that, on an average, less than one-tenth of the entire number of hours comprising any given curriculum is awarded to adjective law.

It is, of course, true that each teacher feels that he would like and should have more time for his special work, but, after all allowance is made for this feeling, there is no need of argument to prove that, if the views herein expressed as to the importance of instruction in this division of the law are sound, the subject is deserving of a much larger portion of the entire time than it now has, and that, without additional time, it is

impossible to plan a complete course in pleading and practice, or to achieve the results which should be accomplished.

The present full recognition of the value of clinical teaching and training in medical schools is not without significance in this connection. It is undoubtedly true that there are fundamental differences between law and medicine which make it unsafe to conclude that methods of instruction which have been tried and found successful in one, will be equally successful in the other, but when we find one of our leading medical schools devoting a large portion of the time awarded to such a department as pathology to instruction of a practical character, it may, at least, be wise for us to ascertain if considerable time may not be advantageously given in a course of legal education to somewhat analogous instruction.

Although it seems presumptuous to make suggestions to a body of experienced legal educators as to methods of teaching pleading and practice, entire silence on the topic would leave this paper incomplete, since the methods employed largely determine the amount of time needed for a complete course.

What is said, however, must be stated as briefly as possible and comparatively little attention can be given to matters of detail.

In planning the course, make system the first essential, so that the original process in an action and the final process are closely bound together, the different proceedings therein taught in such a manner and in such order that their relation and interdependence are made plain, and the truth made evident that even minor matters which, to the student seem to have been, and often are, arbitrarily fixed, yet have a place in the system and a sound reason for their existence in the necessity for an orderly and certain administration of justice by which alone the rights of litigants may be protected. For instance, the precise period of twenty days, which is the time allowed in most states in courts having general jurisdiction, for appearance and answer by defendant after personal service of process upon him, is not based, at present, upon any good

reason and might wisely be shortened under existing conditions of travel and communication, but that some period should be definitely established and uniformly adhered to is demanded by the soundest reason, viz., the protection of a defendant's rights.

It is plain that a course thus planned will not be devoted solely or chiefly to the subject of pleading as is now frequently the case. The great importance of the subject is fully recognized, but it should take its proper and orderly place in the system.

A few introductory lectures may wisely be given showing the relation of the adjective to the substantive law, the intimate connection between the two and the absolute necessity to a lawyer of a knowledge of the former if he is to make his knowledge of the latter of practical use to his clients.

I consider it important that the student should, if possible, be impressed with this necessity at the very commencement of his study, as the character of the work, in the earlier portion of the course suggested, is not calculated to invite and stimulate mental activity as much as are some of the courses in substantive law, and any lack of devotion at the beginning will naturally make the remainder of the course less beneficial.

Following this introductory work the logical development of the subject suggests a study of the tribunals by which justice is administered, including consideration of the essentials of any judicial tribunal, some outline history of the origin and development of our present courts and the extremely important questions of jurisdiction and of judicial disability.

The student is now in a position to inquire into the nature of an action and of a special proceeding, to learn something of the purpose and the effect of statutes of limitation, of the rules as to parties and of the methods by which proceedings are commenced and the person or property of the defendant brought within the jurisdiction of the court. The consideration of these topics leads naturally and logically to the subject of pleading—the manner in which the points in dispute be-

tween the litigants are presented to the court for determination.

Without further specification, the foregoing enumeration will sufficiently indicate the proper order of instruction in relation to trials, judgments, executions, appeals and the subordinate topics such as provisional remedies, tender, discovery and inspection and the like. To attain the best results, theoretical and practical training should go hand in hand throughout the entire course. The latter should be, as nearly as possible, the same in character as the student would receive if engaged in the actual work of his profession and may wisely, therefore, be adapted to the system of procedure under which a majority of the students of a given school are to practice; but whatever system of pleading and practice is to be followed in the practical work of the course and under whatever system the student intends to practice, theoretical instruction in common law and equity pleading must not be omitted, both on account of the disciplinary value of the study and because no intelligent understanding of code pleading is possible without a knowledge of the systems from which it has sprung. To impart this knowledge, the case method of instruction is well adapted.

This would certainly be my choice if the students are to be fitted to practice in what are known as the common law, or the quasi-code states, and my preference, even where they are to practice in code states, although lack of time, under existing conditions, may make necessary the adoption of some different method in this portion of the course.

But whatever method is chosen, no proper course in pleading under the reformed system is possible unless it is based upon prior courses in pleading under the systems which it has succeeded, and the relation of the reformed system to the common law and equity systems should be constantly emphasized.

In the course in code pleading, and upon other topics, aside from common law and equity pleading, the best material for theoretical instruction will, in my judgment, be found in the

statutes relating to the special topics under consideration and in selected cases.

The historical development of the subject in all its different branches by the true case system is not possible within the time which could ever be properly awarded to the study of this division of the law, nor is it at all certain that such use of cases is here desirable.

Some modification of the system must, therefore, be made, and, if I say that the cases should be used as interpretative of the statutes and rules, it will, perhaps, indicate the method which seems adapted for this course as distinguished from the pure case system on the one hand or the illustrative system on the other.

This being, in general, the basis of the selection of cases, it is manifest that the latest cases rather than the earliest are often the ones to be chosen, although frequently the historic development of some single topic by cases is wise and, indeed, essential to its clear understanding.

In teaching code procedure I hold the opinion that it is best to base the instruction upon a single code and the cases under that code rather than to attempt a comprehensive study of the numerous codes and of cases selected from different code states. One reason for this opinion is found in the time required for any satisfactory treatment of the subject by the alternative method.

Another and stronger reason is that, since the essentials are the same under all our codes, except that of Louisiana, a well-defined course of instruction based upon a single code and the cases thereunder is most likely to give a clear conception of the system of reformed procedure as a whole; a comparison of different codes, and a study of the differences which exist on minor points having a tendency to produce confusion, to magnify the differences and to conceal, or, at least, obscure the essential unity of system existing in the different code states.

The character of the practical work may be indicated by a brief account of a method which has been adopted and found

effective in that portion of the course relating to pleading under the New York Code of Civil Procedure.

In connection with the study of the statutes and cases relating to complaints, a statement of facts is given to the class resembling closely a statement which would be made by a client to an attorney ; that is, it contains, in addition to the facts constituting the cause of action, other facts, some of which are evidentiary, some immaterial and some entirely irrelevant. From this statement every member of the class prepares and hands to an assistant, within a given time, a summons and verified complaint. He examines the papers, selecting and grouping such as have characteristic and important defects or marked merit. From these the teacher chooses a few which are representative, and these are read in whole or in part in the class-room, and are criticized and discussed by both teacher and students. Each student may thereafter have the benefit of the criticism of his own complaint by the assistant. It is surprising how many fine opportunities are presented by the complaints thus prepared for emphasizing the essentials and the logical basis of a good pleading under any system, and for making clear the defects which should be most carefully avoided ; and after the student has prepared and had criticized in this manner a complaint in contract, one in tort, one to enforce equitable rights, and one, for example, in a statutory action, he ought not to be at a loss how to draw his complaint in any case when he enters upon actual practice.

The subsequent steps in arriving at an issue may be made plain in the same manner. For instance, a complaint, which is defective, but which has been actually used in an action, and therefore has an added interest for the student, is printed in its entirety as it would be received by an attorney, and not merely that portion thereof which is defective, and the student is required to take such action as he thinks proper, whether it be to demur, to answer, to move to make the complaint definite and certain or to strike out certain matter.

The papers prepared are handed to the assistant and, as in the case of complaints, form the basis of class discussion and comment by the teacher and the individual paper has the more minute criticism of the assistant.

If sufficient time is granted, work of this same general character can be done during the entire course.

The class-room discussion of the main points involved in the preparation of pleadings and other procedural papers, guided by the teacher in charge of the course, seems to me very important and is necessary in order to secure uniform and systematic treatment of the whole subject, but the more this is supplemented by the careful instruction of sections or individuals by a competent assistant upon the minor points, the better will be the results obtained.

A complete course in pleading and practice of the character outlined, combining theoretical and practical instruction is, as has been said, an impossibility under the present arrangement of the law school curriculum, but it can hardly be an impossibility to effect such a rearrangement as will afford sufficient time for a reasonably complete course in this department without unduly lessening the time now granted to some branches of substantive law.

That such a course is necessary, if the law school is to fully perform its duty, is my firm conviction.

It is not to be hoped that this paper has convinced others, but it may possibly have served the purpose of again calling the attention of those to whom I am speaking, for whom it has been written and who are especially solicitous for the high character and completeness of legal education, to a subject which deserves their careful consideration.

COURSES OF STUDY FOR LAW CLERKS.

BY

FRANKLIN M. DANAHER,
OF ALBANY, NEW YORK.

Member of the State Board of Law Examiners.

Because of the limited time and space allotted to us, we must be brief, and therefore will leave unsaid much that is relevant to our discourse on the general subject of legal education, its paramount importance to the public as well as to the profession, its history and development, its present needs and future requirements. The American Bar Association, through its Section of Legal Education, is doing good work in advancing the cause of higher education at the bar, and much of the marked improvement therein and the general raising of the standards for admission thereto are due to its intelligent propaganda. An examination of its reports, however, demonstrates that those who shape its policies, read its papers and give direction to its debates, devote their time and talents almost, if not exclusively, to the establishment and improvement of law school methods and pay but slight, if any, attention to the legal education of the law clerks who cannot, by reason of their environment, attend upon a law school. This omission is due to the fact that the majority of those who endeavor to raise the standing of the profession by educating its members are teachers in law schools and because the average practitioner has neither the time nor the learning to devote to the subject. Whatever may be the cause, the important matter of the education of the law clerk in the science of the law appears to be totally neglected, and it will be our present endeavor, although an "average practitioner," to remedy that neglect, with the assistance of the aforesaid professors of the law.

We believe that those law clerks now studying to be lawyers, whose circumstances prevent their attendance upon a law school, are thereby handicapped and are too numerous and will constitute too great a proportion of the bar of the future to be educationally neglected by those who are constantly evolving new methods of imparting legal knowledge to the students of the universities. The highest interests of the state, as well as the good of the profession, demand that some endeavor be made to aid them in their struggle, and because of it, the New York State Board of Law Examiners, through the altruistic kindness of the law faculties of those great centres of legal education, Cornell, Yale, Pennsylvania and the New York Law School, is permitted to offer to the law clerks of the United States courses of law study based upon scientific method, which can be followed in the office, wherein are presented the subjects of study, the books to be read thereon, and the order of their reading, to the end that they may enter upon the practice of their profession on an equality with the law school graduates, with some knowledge of the scientific side of the law, and better fitted to take upon themselves its duties and responsibilities.

In offering these courses of study the Board must not be understood as in any way depreciating or underrating the necessity of a law school education. In a paper read by the writer before the New York State Bar Association, at its annual meeting held in the city of Albany in 1897 (Reports New York State Bar Association, Vol. 20, p. 105), speaking of the necessity of law school training for applicants for admission to the bar, we said:

“ Observation shows that under modern conditions existing in the profession, an education in law cannot be procured exclusively in a law office and that those who have had the benefit of a law school training are better equipped to enter upon their careers and are more likely to succeed therein than those who come to the bar through an office. The reasons for this are many and obvious. The law clerk of to-day has not the

advantages nor the opportunities of his predecessor of even twenty years ago. The methods of office work have been revolutionized in that time. The days when we, as clerks, laboriously made five, ten or fifteen copies of a complaint in a foreclosure or partition, or copied and triplicated, by pen, orders and complaints and answers, at law and in equity and unconsciously absorbed the form and substance of what we were doing and learned the language of the law, have given way to the days of the stenographer and typewriter. Law papers and briefs are now dictated by the attorney to the office stenographer, manifolded by machinery and sent out in many instances without the knowledge on the part of the clerk that any such were ever in existence. In many offices clerks follow specialties and learn nothing else, and, paradoxical as it may seem, the more business an office has the less are the educational opportunities of the clerk. . . .

“ How many lawyers, with students in their offices, know or care what the latter are reading or if they study at all ? Their reading was not directed in their student days, and they see no reason why that of the present aspirants should be, forgetting entirely the differences in existing conditions at the bar and the vast number of better equipped competitors with his clerk, that the law schools are yearly turning out. . . .

“ The chances are equal, if the lawyer cared, that he would not know how to direct or construct a well-considered and progressive course of law reading, covering a period of two years or more ; so, beyond telling him to commence on Blackstone, through many obsolete pages of which his clerk will unnecessarily wade, and then to read Kent, he lets him proceed at his own sweet will and pleasure, to the destruction of all method, the waste of much valuable time and the consequent loss of much needed knowledge. . . .

“ Members of the bar of the future, to succeed, must have a scientific, well directed and comprehensive training in a law school. The fact that many of the lawyers of to-day did not have that advantage and still succeeded is no reason why the

future will not demand it. There is so much to be studied, and so much more that cannot be studied for want of time; there are so many books that must be read and so many more that can be dispensed with; there are so many cases to be considered, rules to learn and exceptions to know, that unless the law student puts himself under the guidance of some one learned in the art of directing law study, he will float at the mercy of every varying wind and tide, upon an ocean of knowledge, without rudder or compass, and become unfit to make the voyage of life in his chosen profession."

Hon. William P. Goodelle, the President of our Board, in his remarks at the conference of State Boards of Bar Examiners, held in connection with the Section of Legal Education of the American Bar Association, at Saratoga Springs, N. Y., in 1898 (Reports American Bar Association, Vol. 21, p. 533), speaking on the same subject, said:

"While many who have not had law school advantages succeed in passing our examinations, they find it exceedingly difficult. The law offices of this state, with typewriters and stenographers doing the work of students in earlier days, with little or no attention paid to them or to their course of study by those who should be their legal preceptors, furnish very inadequate advantages to the ordinary student, and he is an exceptionally good man who can go into a law office and so, unaided, fit himself to pass an examination.

"The student has learned that it is the thorough drill and systematic study of the law school that he needs and desires to satisfactorily qualify himself in the law; and compelled by a somewhat seeming necessity, coupled with such desire, the tendency is toward the law schools; and the growing appreciation of a law school course, will, in my judgment, result before many years in the Court of Appeals requiring by its rules that some portion, at least, of a legal course of study (in New York) shall be had in a law school."

The Board is convinced from its abundant experience that law clerks are not as well equipped in the beginning of their

practice and do not know as much law as the graduates of the schools. Its records show that out of every one hundred applying for examination for admission to the bar, who have not had the benefit of a carefully considered and scientific course in a law school, twenty-two fail, and but twelve fail who have had law school training, and the probabilities of future professional success are about in the same proportion. It knows that a curriculum for law clerks is a crying need, from the many requests made for the same, and from the statements repeatedly made to its members by the law clerks who spent their last year of study in attendance upon a law school, that that which struck them most forcibly and regretfully, after they had been there for a few months, was the valuable time they had lost during their clerkship in the study of the law, not from lack of time or of industry, but from want of method and of direction in how, and what, and when to read.

The Board recommends a person, who intends to become a lawyer, first to enter a law school and thereafter complete his legal education by serving a clerkship in a law office.

Unless the student has studied the law as a science he cannot, even in a law office, without loss of valuable time and much unnecessary labor, learn to apply it practically with benefit to himself and his client.

We believe that one who serves a law clerkship of a year after two years of attendance upon a law school will learn more of practice and procedure—and learn it better in that year—than he would in three years' clerkship without law school experience, and be a much better lawyer in addition.

The number of law books and their yearly increase is appalling, and is also a most important factor in the great problem of education in the law. Mr. Stephen D. Griswold, the law librarian of the New York Library, at Albany, writes to us that in 1901 there were two hundred and thirty volumes of law reports published in English, containing about one hundred and sixty-one thousand pages, of which New York State alone contributed about nineteen thousand pages. That does not in-

clude text-books, encyclopædias, reprint series of reports, nor the law magazines. All those pages in a single year ; every line a danger, every word a trap, even the punctuation a snare ! Think of what has heretofore been published, and even though he shuts his eyes to the deluge which the future will bring forth, does the average law clerk imagine that he can, without the direction of a properly trained instructor in the law, know what to study, and what not to study, out of that vast mass of undigested matter ?

It would be a waste of time for us to endeavor to establish the proposition that a law clerk cannot combine within himself nor find in his law office all the advantages of a university, and we will not make the attempt.

We will be content if but a portion of the good accomplished by the preparation of this paper consists in forcing into law schools those indifferent law clerks who can, but will not, either through ignorance or laziness, enter the same to prepare themselves properly for their future professional life. Concerning such, we feel at times quite in the frame of mind of Prof. James Barr Ames, of the faculty of the Law School of Harvard University, who wrote to us that it seemed to him undesirable to encourage men who cannot have the benefit of law school training, but propose to practice law, by providing a curriculum for them alone. We were convinced, however, that it was very essential that some educational aid should be given to those who must come to the bar through the office, and we appealed to the law faculties hereinbefore named to provide courses of study for them, with the admirable results hereinafter presented.

The responses were prompt and generous. They show a kind and most commendable disposition and an earnest endeavor to aid those who are endeavoring under adverse conditions to fit themselves through office study alone for the law, and convince us that they have been overlooked rather than deemed unworthy of consideration by the leaders in the present movement towards higher education at the bar. The

courses of study submitted are not ideal, nor do they possess academic perfection; their authors intended that they should not, but for the purposes for which they were created they are complete and comprehensive. They represent years of valuable work and experience in the art of teaching law, and are mines full of treasure for faithful and diligent law clerks. Each is up-to-date, properly balanced and scientifically arranged by its authors, but it must be distinctly understood that neither is as good, nor as efficient in results, as could be obtained by personal attendance upon the exercises and lectures of the schools.

CORNELL UNIVERSITY,

ITHACA, N. Y.

PROPOSED OUTLINE OF STUDY FOR STUDENTS IN LAW OFFICES.

Prepared by the Faculty of Cornell University College of Law.

A.

SUBSTANTIVE LAW.

The studies in Procedure should begin with the studies in Substantive Law and be continued throughout the whole period of study.

Wherever statutes are indicated, they are the New York statutes. Students in other states must seek assistance as to statutory references from practitioners or teachers in their states.

I. Elementary Law.

Woodruff's Introduction to the Study of Law.

Robinson's Elementary Law, with collateral readings in Blackstone (Chase's Ed.) and Kent.

II. Contract and Agency.

Anson on Contract (Huffcut's Ed.), with study of Huffcut and Woodruff's American Cases on Contract (2d Ed.); or Clark or Harriman (2d Ed.) on Contract.
Huffcut on Agency (2d Ed.), Book I, with Huffcut's Cases on Agency.

III. Torts (including Master and Servant).

Bigelow on Torts (7th Ed.), with Bigelow's Cases on Torts.

New York Code of Civil Procedure, §§ 1899-1908 and cases thereunder.

Huffcut on Agency (2d Ed.), Book II.

IV. Domestic Relations and Law of Persons.

Tiffany on Domestic Relations, with Woodruff's Cases on Domestic Relations and Law of Persons.

New York Domestic Relations Law.

New York Code Civil Procedure, §§ 1742-1774.

V. Crimes and Criminal Procedure.

Clark and Marshall on Criminal Law, with Beale's Cases on Criminal Law, or

May on Criminal Law, with Chaplin's Cases on Criminal Law.

Beale's Criminal Pleading and Practice.

New York Penal Code and Code of Criminal Procedure.

VI. The Law of Property.**1. Real Property.**

Tiffany on Real Property, or Hopkins on Real Property, or Tiedeman on Real Property.

Finch's Cases on the Law of Property in Land.

Fowler's Real Property Law of New York.

2. Personal Property, including Sales.

Brantly on Personal Property, with vol. I of Gray's Cases on Property, pp. 1-384.

Fowler's Personal Property Law of New York. Tiffany on Sales, or

F. M. Burdick on Sales, with F. M. Burdick's Cases on Sales.

Mechem on Sales (2 vols.), and Bennett's Ed. (1899) of Benjamin on Sales, are valuable for reference or study.

VII. Wills and Administrations.

Chaplin on Wills, with Page on Wills for collateral reading.

Croswell on Executors and Administrators (1897).

New York Code of Civil Procedure, §§ 1814-1870 and 2472-2860.

New York Revised Statutes, Part II, ch. VI, title I.

(a) Art 1, § 1 (as am. by L. 1867, ch. 782), 2-5.

(b) Art. 2, § 21 (as am. by L. 1867, ch. 782), 22.

(c) Art. 3, §§ 40-48, 49 (as am. by L. 1869, ch. 22), 50-53, 69-71.

New York Revised Statutes, Part II, ch. VII, title III, §§ 67-70.

New York Laws.

L. 1853, ch. 238, §1 (as am. by L. 1879, ch. 316).

L. 1860, ch. 360, §§ 1 and 2.

L. 1865, ch. 368, § 6.

L. 1867, ch. 782, §§ 2, 5, 13 (as am. by L. 1887, ch. 630), 14.

L. 1875, ch. 267, § 7.

L. 1875, ch. 343, § 5.

L. 1887, ch. 317, § 7.

VIII. Equity Jurisdiction.

Bispham on Equity (6th Ed.) or
Eaton on Equity.

IX. Special Contract Subjects.

1. Bailments and Carriers.

Browne's, or Lawson's, or Hale's texts, with

McClain's Cases on Carriers, and article II of the New York Railroad Law.

2. Insurance.

Richards on Insurance, with Woodruff's Cases on Insurance; and §§ 55, 57, 92, 121, 211, 238, 266, of the New York Insurance Law.

3. Negotiable Instruments.

Bigelow's Bills, Notes and Cheques (2 Ed.).
Huffcut's Negotiable Instruments.

X. The Law of Association.

1. Partnership.

Burdick on Partnership, with Burdick's Cases.
New York Partnership Law.

2. Joint-Stock Companies.

New York Joint Stock Association Law.

3. Private Corporations.

Taylor or Clark on Corporations, with Smith's or Keener's Cases on Corporations.
New York General Corporation Law.
New York Stock Corporation Law.
New York Business Corporation Law.
New York Code Civil Procedure, §§ 1775-1813, 3357-3397.

4. Public Corporations.

Dillon on Municipal Corporations, or
Smith's Cases on Public Corporations.

XI. Constitutional Law.

Cooley's Principles of Constitutional Law, with
McClain's Cases on Constitutional Law.
United States Constitution.
New York Constitution.

B.

CIVIL PROCEDURE AND EVIDENCE.

(NOTE.—The study of Procedure should begin at the same time as the study of the Substantive Law, and be continued throughout the whole period of study.)

I. Civil Procedure.

1. *Introductory.*

Bryant's Code Pleading.

2. *Courts.*

New York Constitution, art. VI.

New York Code Civil Procedure, §§ 1-103, 190-198,
217-262, 340-361.

3. *Limitations.*

New York Code Civil Procedure, §§ 362-415.

4. *Commencement of Actions.*

New York Code Civil Procedure, §§ 416-477.

5. *Pleadings.*

New York Code Civil Procedure, §§ 478-546.

Bliss, Code Pleading.

6. *Interlocutory Pleadings.*

New York Code Civil Procedure, §§ 548-827.

7. *Trials.*

New York Code Civil Procedure, §§ 963-991, 1008-
1026, 1163-1189.

8. *Judgments and the Enforcement Thereof.*

New York Code Civil Procedure, §§ 1200-1281, 1932-
1941, 1362-1495, 2432-2471, 1871-1879.

9. *Special Provisions as to Property Actions.*

New York Code Civil Procedure, §§ 1496-1741.

10. *Foreclosure by Advertisement.*

New York Code Civil Procedure, §§ 2861-3158, 2231-
2265.

11. Actions in Justices' Courts.

New York Code Civil Procedure, §§ 2861-3158, 2231-2265.

12. State Writs.

New York Code Civil Procedure, §§ 1991-2102.

13. Vacating Judgments.

New York Code Civil Procedure, §§ 1282-1292.

14. Exceptions ; Motion for New Trial.

New York Code Civil Procedure, §§ 992-1007.

15. Appeals.

New York Code Civil Procedure, §§ 1293-1361.

16. Certiorari.

New York Code Civil Procedure, §§ 2120-2148.

II. Evidence.

Stephen's Digest (Chase's 2d Ed.), or

Greenleaf on Evidence, vol. I (Wigmore's Ed.).

Thayer's Cases on Evidence.

New York Code Civil Procedure, Index "Evidence."

YALE UNIVERSITY,

NEW HAVEN, CONN.

**A COURSE OF READING IN LAW WHICH THE FACULTY OF THE
LAW DEPARTMENT OF YALE UNIVERSITY APPROVE AND
WHICH IT IS ASSUMED WILL REQUIRE THE STUDENT'S
CAREFUL ATTENTION DURING A PERIOD OF AT LEAST
THREE YEARS.**

The exact order in which legal studies should be pursued is, as respects some topics, more or less arbitrary. As respects others it is a matter of no little importance, and one which cannot be disregarded, if the best results are to be attained.

The matter is of much more importance to those studying alone in offices than to those who have the aid of instructors in the Law Schools.

The course of study which we have outlined is not in all respects that which is followed in the Yale Law School. A course prescribed for students in schools generally needs modification for those who cannot have the assistance which the schools afford.

The student may begin his legal study with *Robinson's Elementary Law*, which should be read in connection with *Blackstone's Commentaries*, consulting at the same time such other works cited by Professor Robinson as the student has access to in the office in which he reads. He should read the Preface to the work on Elementary Law and carefully conform to its directions. The study of *Criminal Law* may next engage his attention, and *Clark's* or *May's* work on this subject be read. This may be followed by *Cooley* or *Bigelow on Torts*.

He may then pass to the subject of *Contracts*, and he is advised to read *Huffcut's Edition of Anson's Law of Contract*, and follow it with *Clark's Contracts*, *Huffcut's Agency*, *Lawson's Bailments*, and *Schouler's Domestic Relations* may next be read in the order named.

Thereafter the law of *Property* may be taken up. The student is recommended first to read *Darlington on Personal Property*, and then *Tiedeman on Real Property*.

By this time he ought to be in a position to understand the bearing of methods of *Procedure* upon the development as well as the enforcement of common law rights, and we should advise his turning his attention to *Adjective Law* so far as to acquaint himself with the main rules of pleading and evidence in civil actions. He should now carefully study the first volume of *Greenleaf's Evidence*; then *Heard's Civil Pleading*, following it with *Bryant's Code Pleading*.

The subject of *Equity* should next be taken up, and he may use first the work either of *Bispham*, *Eaton* or *Merwin*, and then *Puterbaugh on Pleading and Practice in Equity*.

This may be followed by a work on *Negotiable Paper*, *Bigelow on Bills and Notes*, or *Norton on Bills and Notes* (3d Edition), or *Huffcut's Cases on Negotiable Instruments* may be read.

In conclusion of these preliminary studies the student is advised to read, in the order named: *Lindley or Parsons on Partnership*, *Morawetz, Taylor, or Elliott on Private Corporations*; *Cooley's Principles of Constitutional Law*; and *Pomeroy on Remedies and Remedial Rights*.

NEW YORK LAW SCHOOL,

NEW YORK CITY, N. Y.

CURRICULUM FOR LAW CLERKS, RECOMMENDED BY THE DEAN OF THE NEW YORK LAW SCHOOL.

<i>Elementary Law</i>	Robinson.
<i>Domestic Relations</i>	} Dwight on Persons and Per- sonal Property.
<i>Personal Property</i>	
<i>Criminal Law</i>	May (Beale's Edition) and Beale's Criminal Pleading and Practice.
<i>Torts</i>	Cooley.
<i>Contracts</i>	Clark.
<i>Principal and Agent</i>	Huffcut.
<i>Bailments</i>	Lawson or Hale.
<i>Sales</i>	Tiffany.
<i>Partnership</i>	George.
<i>Negotiable Paper</i>	Norton.
<i>Insurance</i>	Richards.
<i>Principal and Surety</i>	Baylies.
<i>Equity, Jurisprudence</i>	Eaton, or Bispham.
<i>Law of Corporations</i>	Elliott, or Clark.

<i>Wills and Administration</i>	{ Schouler on Wills. Crosswell on Exrs. and Admrs.
<i>Real Property</i>	Tiedeman.
<i>Pleading and Practice</i>	N. Y. Code Civil Procedure.
<i>Evidence</i>	Greenleaf (1st vol.), or Chase's Stephen's Digest of Evidence.
<i>Constitutional Law</i>	Cooley.
<i>Legal Ethics</i>	Sharswood.

UNIVERSITY OF PENNSYLVANIA,
PHILADELPHIA, PA.

SUGGESTED LIST OF WORKS TO BE STUDIED BY A MAN IN-
TENDING TO STUDY LAW IN AN OFFICE, PREPARED BY
THE DEAN OF THE DEPARTMENT OF LAW.

<i>Blackstone</i>	Any recent standard edition.
<i>Property</i>	Gray's Cases on Property.
<i>Real Property</i>	{ Digby's History of the Law of Real Property. Williams on Real Property.
<i>Contracts</i>	{ Harriman on Contracts. Keener's Cases on Contracts.
<i>Equity</i>	{ Keener's Cases on Equity. Bispham's Equity.
<i>Trusts</i>	Ames's Cases on Trusts.
<i>Evidence</i>	{ Thayer's Cases on Evidence. Greenleaf's Evidence, 1st vol.

In conclusion, we will say to those availing themselves of the above valuable work of the law faculties, who have been willing, without price and against interest, to aid in their law education, consider each course carefully, and having determined which is the best suited to your circumstances and sur-

roundings, adopt it, stick to it and finish it. Do not imagine that you can do better work yourself or construct a better system. You cannot, and therefore, should not try. The curse of the desultory reading of the majority of the law clerks is its want of method; the lack of an orderly arrangement of the subjects, all co-ordinating so that something read to-day by logical processes will lead up to that which may come a year later. The learned gentlemen who constructed each of the courses made it a work perfect in itself, a finished structure from foundation to roof; the disturbance of a single item would destroy its usefulness, and the student who attempts to form from either a system to suit himself will lose the benefit of the logical and scientific method which is the underlying principle of each. The topics must be studied and the books read in the order in which they are placed. Do not change the arrangement nor substitute other books for those recommended. The books named were written, in many instances, by educators for law students, and are distinguishable as such from the ponderous encyclopædias and treatises written for the lawyer's use in court. It may be that you do not own the books suggested; if not, buy at least one of them on each topic; you cannot work without tools. You will acquire a law library some time. Why not begin with the volumes here recommended? Every dollar so spent will be advantageously invested, and its possible expenditure in ways not as beneficial nor as proper prevented.

We lay great stress upon the constant use of the books of "Select Cases" recommended to be read in connection with the text-books. They are invaluable and a constituent part of the courses. They contain all the leading cases, selected with judgment on the various topics treated, and illustrate the principles of the law by the opinions of its great masters, and on all the subjects bring to the student the best treasures of thousands of books entirely beyond his reach.

Professor Huffcut, of the faculty of the Cornell University College of Law, expresses so pithily how the books should be

read that we will content ourselves on that necessary consideration, with a quotation from a letter which he wrote to us. He says: "In regard to the methods of reading, I would suggest that the student should use the text-books and case-books as a pair and not as a tandem. He will get better results by using the principles of the law in operation in the cases as fast as he learns them, than by attempting to learn all of the principles first and then studying the cases."

The courses are good for any state in the Union, for they purpose to teach the principles of the great science. The references to the New York statutes in the Cornell course are intended only for those reading for admission to the New York bar, but they are none the less of use to the students of other states whose task it will be to search the statutes of their own jurisdiction and find therein the corresponding law and study it accordingly.

It will take a clerk who studies diligently about three years of work, ten months to a year, four hours to a day, to finish any of the courses. Four hours a day of intense application to the study of the law is amply sufficient for the average law clerk and as much as he can assimilate, in view of his office work, with a maximum of good results. If he has additional time in which to read, he should broaden his mind and improve his style and diction by reading the masterpieces of English literature, not neglecting its poetry and drama; he should read books on the history and development of the law and on English and United States general political and constitutional history; also Sharswood's Legal Ethics, a most valuable work.

The courses suggested are neither in extent nor variety as complex, nor do they cover as many subjects as the curriculum of any of the law schools named, and we indulge in the hope that the clerk will consider them carefully and be so impressed with the magnitude of the task before him that he will at once enter a law school and receive that education in the law which he can obtain nowhere else.

But while engaged in the cultivation of his intellect he must not be unmindful of the moral obligations which he will assume upon entering the profession, and should endeavor to fit himself to support honorably the highest traditions of the bar in its relations to the state, to the administration of justice, to his clients and to himself.

He should reflect upon the many responsibilities he may be called upon to assume, and fully determine never to do a dishonorable act nor a conscious wrong, and so to live that he will not give just occasion for reproach, either to himself or to his calling.

He should have high ideals and live up to them in a manly and sensible way, and endeavor to be a good citizen, as well as a good lawyer. We know that by the combination of talent in his profession and of good citizenship he will be able to reap some of the rewards of properly applied industry and at the same time do his share towards maintaining the dignity and prestige of the ancient and honorable profession of the law.

PROCEEDINGS
OF THE
SECTION OF PATENT, TRADE-MARK AND
COPYRIGHT LAW.

Saratoga Springs, N. Y., August 28, 1902, 3 P. M.

The annual meeting was held at the club room of the Grand Union Hotel.

The meeting was called to order by the Chairman, Lester L. Bond, of Chicago.

The Chairman read the Annual Address.

(See the Address at the end of these Minutes.)

The Chairman :

I will announce the reading of the paper on Trade-Mark Legislation by Arthur P. Greeley, of Washington, D. C.

Arthur P. Greeley then read a paper entitled "Pending Trade-Mark Legislation."

(See Paper at the end of these Minutes.)

Arthur S. Steuart, of Baltimore, Maryland, read a paper entitled "Trade-Marks: Criminal Remedies."

(See Paper at the end of these Minutes.)

The Chairman :

This concludes the papers on the subject of trade-marks. I take it that at this time a discussion of these papers will be proper.

Arthur S. Steuart, of Maryland :

If I may be permitted at this stage, in order to give point to the discussion, I would like to read a resolution :

That it is the sense of the Patent Section of the American Bar Association that a comprehensive national trade-mark law should be enacted by Congress which will provide for the

registration in the United States Patent Office of trade-marks used in interstate commerce as well as in foreign commerce, also for a criminal remedy for the wilful forgery of such registered trade-marks and the utterance of such forgery and also contain provisions to fulfill certain treaty obligations which have been entered into by the United States Government on the subject of trade-marks :

Therefore, it is Resolved that the Standing Committee on Patent, Trade-Mark and Copyright Law be and they are hereby requested to confer with the Trade-Mark Commission appointed by Congress and, if possible, to agree with that Commission upon the form of a bill containing provisions as above indicated which will meet the approval and receive the endorsement of both the Commission and the committee and report such bill to the next meeting of this Section, having previously complied with the requirements of the by-laws of this Association as to the printing and distribution of the committee's report before the meeting.

Edmund Wetmore, of New York :

Perhaps Mr. Greeley can tell us something of the possibility of getting these various bodies together.

Arthur P. Greeley :

The Commission to revise the Patent and Trade-Mark laws has completed its labors, and I doubt very much whether it would be possible to get the members of that committee together as a Commission again. The salaries of the Commission, you understand, ceased with its first meeting or a little before. There is no salary attached, so that the body can hardly be said to be a continuing body. The report has been made and it was with a good deal of difficulty that we could get Judge Grosscup to find time to take up the matter at all, and I doubt very much whether it would be practicable to get the members of the Commission together to do anything with reference to the legislation. The Commissioners have submitted their report for what it is worth and it is to be taken up as Congress may see fit.

Thomas J. Johnston, of New York :

Is not the Commission *functus officio*, and has it not ceased to exist ?

Arthur P. Greeley :

I believe so.

Edmund Wetmore :

I was likewise going to suggest, if the Commission had not ceased to exist, whether a conference with the committee is impossible. It might be arranged. The object is, I suppose, to get a bill which would at all events receive the endorsement of the Bar Association and then to endeavor to get that bill passed, saving the work of the Commission and all that has been done upon that subject before and not undertaking to consider this whole subject again, and the resolution would call upon us to do that. It seems to me that it would be better to omit the statement, for example, that the registration should also apply to the criminal remedy for forgery of such marks, because that would render it incumbent upon the committee that might be appointed to adopt that feature. Now that is a question upon which I think it would be wisest to leave the committee to arrive at such conclusion as they may after discussion. For, as a matter of practical experience, while I believe it is entirely constitutional and within the power of Congress to grant such a remedy as that, yet, without going into a discussion of the subject at present, I would say that it is a remedy that should come up for discussion before the committee. If that is omitted, it would in no respect hamper the committee from putting in such a clause if they think it best, while, on the other hand, if it is kept in, it will conclude them.

Arthur S. Steuart :

I would be very glad to accept that amendment.

Edmund Wetmore :

I would, therefore, with the consent of the mover, move to amend by striking out the clause "also for the criminal remedy

for the wilful forgery of such registered trade-marks and the utterance of such forgery." That would leave simply a comprehensive bill in accordance with the treaty obligations.

Arthur S. Steuart :

I would like to say one word upon the point of the existence of the Commission. It does not to me seem to be at all certain that the Commission is no longer in existence, or that the Commission has no power to send to Congress another report. If it should so happen in the future that we should become satisfied that the Commission had no power to act in the matter at all, and that we, therefore, could not agree with them as to anything—that they have no power to agree and no power to enter a recommendation—the result of the adoption of this resolution would simply be that the committee would come back to this Section at its next meeting and make that a part of its report and recommend a bill of its own creation. If it should be decided, upon investigation and an examination of the powers of the Commission under the act creating the Commission, that it had not gone out of existence, that it is still in existence and has the power to make another report to Congress, it would certainly be a matter of very great influence upon Congress if they should make another report if they can be induced to do so.

Robert H. Parkinson, of Illinois :

I confess that it seems to me exceedingly desirable, if there is even any question, any serious question, about the continued existence of the Commission referred to, to avoid encumbering this resolution with any clause that would involve the determination of the question whether that Commission is in existence, and a consultation, even a formal or prefatory consultation, with the various members of the committee. Judge Grosscup, for instance, if in this country, probably would have been inaccessible for any substantial work on that subject. Judge Grosscup is abroad. It certainly may be assumed that it would be impossible within any short period of time for that committee to meet with him, and I think it will be impossible

throughout the year for it to have any such conference with him as would contribute to material progress. Hence, it seems to me, that you would only encumber the resolution if you retain that clause. In reference to the clause relating to the penalty and criminal procedure, I very heartily agree with the suggestion that has been made by Mr. Wetmore that that is a matter that ought not to conclude those to whom we refer this subject by a resolution at this time. It is quite sufficient for us to refer that subject to them for consideration. I appreciate the force of what has been said by Mr. Steuart about the propriety of a penal remedy, but I think there are very serious questions about the expediency of undertaking to incorporate into this statute a remedy of that kind, and even if there were not, it is a matter that ought to be left unprejudiced in its submission. There is in this country unquestionably a very serious difficulty about imposing a criminal clause upon this statute which would not exist in some countries. You are immediately confronted with the question whether, if you impose a penalty, you are not disqualifying all who are associated with the infringement committed from being compelled to testify. You are introducing other complications that would make the practical operation of the law more difficult, I think, than it would be in the absence of these penal provisions. You must immediately encounter the prejudice upon which Mr. Steuart has laid some stress, the local prejudice which you will find in the jurors before whom you must go to enforce such a penalty. You would probably find, if you had a provision of that kind in the statute, that it would be very seldom, indeed, that you would care to seek your remedy in that direction. And yet I fully appreciate the force of all that has been said about the propriety of having such a penalty which may be enforced under some circumstances and which it is certainly morally right should be enforced under some circumstances, but I feel that the importance of the speedy enactment of this law is such as to outweigh any consideration of this kind. If it be possible, let us get the law in substantial operation, with proper reme-

dies on the civil side, within the next year, or the next two years. I think it far better to do that than to be a year or two later in getting it into operation with the additional clause. It seems to me one of the strongest considerations upon this subject is the very mortifying position which we occupy in reference to our foreign obligations. We are under treaty obligations to extend certain rights to those who are extending to us rights in respect to protection under trade-marks in their country. We have to confess that we are disqualified from fulfilling those obligations, that we have not enacted the statutory provisions which are necessary to give effect to the treaty obligations assumed; hence, it seems to me, the importance of expediting action under the statute is the consideration which should control us in so far as we are acting upon lines that are in the right direction and that we ought not to allow ourselves to be encumbered by anything that will delay the consummation of that which our moral and national obligations have imposed upon us.

Robert S. Taylor, of Indiana :

Let me put an inquiry to the Section and to Mr. Wetmore. As I understand our rules, anything which is brought before the Association, as a whole, by a committee for its action, must be printed and distributed before the meeting of the Association; and if the Standing Committee on this subject is requested by this Section to take up that subject and its report is made, it will not come before this Section again before the next meeting of the Association, and if that committee is not required to recommend a penal clause, and if, in its discretion, it does not wish to do it, then the matter will go to the Association with no opportunity by this Section to discuss it or express any opinion about it.

Edmund Wetmore :

That is the law of this Association. I understood Mr. Steuart's motion was that the proposed bill should first be reported to this Section.

Robert S. Taylor :

Then it will not go before the Association for two years.

Edmund Wetmore :

I understood that was the result.

Arthur S. Steuart :

Not necessarily. The motion was that the report of this committee should come back next year to this Section and then the will of the Section would be expressed upon it as to whether it should go over another year or whether the committee should make its report to the general Association at the next meeting, as it can do if, in accordance with the terms of the by-laws, the proposed action by the committee is printed and distributed among the members before the meeting. Then, if the Section approves the report of the committee, the committee may then report to the Association on the next day and get the judgment of the Association.

Robert S. Taylor :

It could not change its report.

Arthur S. Steuart :

No. If the report is changed, it must go over a year, I take it.

Robert S. Taylor :

For instance, if the committee report in favor of a bill without any penal clause and if the members of the Section think it ought to contain such a provision, they could not get that matter before the Association until two years from now.

Edmund Wetmore :

I think that is inevitable.

Robert S. Taylor :

Now then, furthermore, for my own part, I am very strongly in favor of the insertion in the statute of a penal clause. I do not think that the argument which has been advanced upon that subject in this paper can be answered as to its propriety, and it would not seem to me that the presence of such a provision in the proposed bill would hinder action upon it by

Congress. It is a very easy matter to strike out ; it is a very short matter to settle in the proper committee of Congress, and it does not seem to me that it would substantially delay the progress of the bill. It may be that there would be reasons in some cases why such a penal clause ought not to be enforced or would not be enforced, but I do not think that that is of material consideration. Such a provision in the law would not be enforced, I think, at all, or at least very rarely enforced, except upon the initiation of the party injured, and the party injured would have his own choice as to whether he would proceed civilly or also criminally. I think it would be very rare ; I should think it never would occur that the officers of the government would prosecute a man for criminal infringement of trade-marks unless the party injured set the machinery of the law in motion and the result would be to remit the enforcement of that part of the statute to the voluntary action of the parties injured, and as it would in that way practically limit itself, I do not see that it would do any harm.

Robert H. Parkinson :

Perhaps I misapprehended the resolution. I did not wish to be understood as indicating that I myself had made up my mind as to whether it would be desirable ultimately to have that clause included. I do think there are questions to be considered there and particularly that some attention should be given to the question whether the existence of such a clause did not make it impossible for you to compel testimony, even where you are proceeding civilly, from those who might thereby be rendered liable to penalty, but I suggested that as one of the things for consideration rather than something which would control my judgment, but I did understand the resolution presented to contemplate some action in bringing the matter before Congress before one year from now ; but perhaps I misapprehended the resolution.

Arthur S. Steuart :

No ; the resolution says :

(Resolution read.)

Robert H. Parkinson :

It contemplates the preparation of the bill and the submission of it at that time.

Arthur S. Steuart :

Next summer.

Edmund Wetmore :

Then it would be passed upon by the Section as it is put in. We should thresh the question out now. If the committee report it in, the Section may approve of it on that, but on any other provision, if the Section dissents from the committee's bill, it is inevitable that it must go over another year.

Robert S. Taylor :

Not quite so. Suppose the committee bring in a bill and print it and distribute it as the by-law requires. Now, if it is the judgment of the Section that some amendment ought to be made, I suppose that when the matter gets before the Association it is there subject to amendment, and if the representatives of this Section go before the Association and say that, upon further consideration, we think that the report of this committee should be amended so and so, I think the Association would concur.

Robert H. Parkinson :

My idea was, as I think was Mr. Wetmore's, not to commit ourselves as to what we would do. I am not prepared to say whether I would not vote for the resolution, but I think it is a matter to be considered and reported upon rather than to be concluded now.

The Chairman :

The mover of the resolution accepted the amendment, so that that section is not now before the house.

The Secretary :

It seems to me that the action proposed to be taken is a little incongruous. We have a committee of the Association on Patents and Copyrights, a Standing Committee—I think Mr. Wetmore is a member of the committee; and then we

have this Patent and Copyright Section. As I understand the resolution this Section is asking the committee of the main body, the Standing Committee, to formulate a bill and send it back to this Section. It seems to me more proper, or entirely proper, that a committee of this Section should be appointed to consider this whole matter and to report back to this Section for action by this Section that we may act upon the whole thing as a body and then refer our action to the Standing Committee of the Association.

Arthur S. Steuart:

The purpose of this resolution procedure is, I think, in accord with the usual machinery of the Association. There is a Standing Committee on Patent, Trade-Mark and Copyright Law, appointed annually by the President. That Standing Committee is the mouthpiece of this Section. It is the go-between between this Section and the general Association. Anything that this Section wants done, it procures its committee to report to the Association in its annual report and asks the Association to confirm it. Therefore, it is that this resolution was framed in the form of a resolution passed by the Section asking the Standing Committee to take the matter up and then make a report back to this Section next year, and if we approve of the committee's report, we will then ask the committee to report that matter to the Association. There doesn't seem to be the necessity for another committee.

Arthur P. Greeley:

I should very much like, if possible, to have the machinery of the Association so hastened in its operation that something could be done pretty soon with legislation before Congress. As the matter stands now, here are these two bills before the committee of the House. The committees would expect in due time to report upon them to the several bodies, the Senate and the House, but all that the Association can say to the committees is that if you will hold your report for two years—

Arthur S. Steuart.

One year.

Arthur P. Greeley :

One year, if it is adopted by the Section, that at any rate in one year we will present, as expressing the views of the American Bar Association, a bill on the subject.

Robert H. Parkinson :

That will be a different Congress from the one now sitting to whom the bill has been submitted.

The Chairman :

I was myself considerably exercised as to what was necessary to be done by the Standing Committee. I had supposed that my brother Wetmore was the Chairman of this committee, and I got here and found that I was the Chairman of both, and so I have been exercising myself to find out what I had to do, and I find, as stated by my brother Steuart, that that committee is the go-between for this Section and the Association. So, when called on to report to-day, I reported a request for further time so that we can still get in with a resolution from this body to the Association referring this matter to the Standing Committee. I have thought that, possibly, if we want to get a meeting at the expense of the Association we would have to have a straight reference. Perhaps it is not so, but I think that, if the Section committee takes control of it, we shall hardly be able to get an appropriation, and we may not care for one. What is the best thing to be done is in your hands, but I have held the matter open and have stated to the Association that we would not finish our work probably until to-morrow afternoon, and so I am granted time to make this report, and if you want to make a report to the body and have the body submit this to a Standing Committee, it seems to me that that would be the better way, and undoubtedly the Section can control the committee.

Robert S. Taylor :

It seems to me that your suggestion simplifies the whole matter, with one additional suggestion, and that is that we pass this resolution just as we have got it now, requesting the com-

mittee to take the action specified in the resolution, and then, before the Association adjourns, you, as Chairman of the Section, or anybody else, can offer a resolution in the Association, and then that enables the committee to bring it before the Association in a perfectly regular manner.

The Chairman :

That is as I understand it.

Thomas J. Johnston :

The question whether any legislation by Congress is desired at all may be divided under two heads, perhaps—one is expediency and the other power. On the question of expediency, Mr. Wetmore told me some time ago that he has had trade-mark litigation in the courts of nearly all of the United States, substantially all of them, and that he has gotten substantial justice from everyone of those courts. Mr. Wetmore's experience is a large one and that is a large experience to cite. Personally, I believe that we do not need such legislation by Congress at all. Second, the question of power. It seems to be assumed, from what has been said, that Congress has power to enact such legislation and that it will stand the test of litigation. I do not believe it. The Supreme Court has said that manufactures have nothing to do with commerce. Manufactures *per se* are not commerce. The affixing of a trade-mark is an act of manufacture. It is not commerce. It is not within the scope of the commerce clause of the Constitution. Everything which is used in commerce is not necessarily a regulation of commerce, nor does Congress have that power. Take the subject of bills and notes. No gentleman present would contend that Congress has power to enact a uniform law governing the subject of bills and notes and other negotiable paper, yet nothing is more clearly an instrument of commerce than that. Our committee on uniform state laws has gone to immense pains to have uniform laws on the subject of bills and notes. It is labor thrown away if Congress has the power to limit everything connected with commerce. I believe, therefore, that Congress has no power to pass the act proposed. I

think anyone who will read with attention the opinion of Justice Miller in the trade-mark cases will conclude that if it had been necessary in that case to decide it they would have decided that Congress had no power to enact any legislation concerning trade-marks.

The Chairman :

I read that entirely differently. Congress is asking a recommendation for the revision of its trade-mark laws in order to make them agree with our treaty obligations, and Congress is under the impression that it has something to do.

Arthur S. Steuart:

At the request of Mr. Parkinson, I will be glad to read the resolution as it has been amended in three particulars, taking out of the preamble the provision for criminal remedy, and taking out of the resolution the requirement to confer with this possible Commission. The committee may confer if they find the Commission ; if they cannot find the Commission, they will not confer.

The amended resolution was read as follows :

“ That it is the sense of the Patent Section of the American Bar Association that a comprehensive national trade-mark law should be enacted by Congress which will provide for the registration in the United States Patent Office of trade-marks used in interstate commerce as well as in foreign commerce, and also contain provision to fulfill certain treaty obligations which have been entered into by the United States Government with foreign nations on the subject of trade-marks :

“ Therefore, it is Resolved that the Standing Committee on Patent, Trade-Mark and Copyright Law be, and they are hereby requested to frame a bill containing provisions as above indicated and report such bill to the next meeting of this Section, having previously complied with the requirements of the by-laws of this Association as to printing and distribution of the committee's report before the meeting.”

The Chairman :

The question is on the adoption of the resolution as amended.

The resolution was adopted.

Lysander Hill, of Illinois, read a paper on "Preliminary Injunction in Patent Suits."

Harold Binney, of New York, read a paper on "History and Present Status of the Law Relating to Designs."

(See these Papers at the end of these Minutes.)

William C. Strawbridge, of Pennsylvania :

At the request of the Secretary I have prepared a paper relating to a certain case concerning circulars and an alleged infringement of letters patent. It deals largely with the history of that case and discusses arguments there adduced by the plaintiff, the appellant above, and refers to prior cases. There are four other very interesting papers, judging from their titles, and I beg leave to submit my paper without reading it and thus relieve the Section of their using so much time.

The Section then adjourned until Friday, August 29th, at 2 P. M.

Friday, August 29, 1902, 2 P. M.

The Chairman :

The first paper this afternoon will be on "Patent Litigation from the Expert's Standpoint," by Arthur S. Browne, of Washington, D. C.

The paper was then read.

(See the Paper at the end of these Minutes.)

The Chairman :

The next is a paper by Charles Martindale, of Indianapolis, on "Evils of the Present System of Producing Evidence in Equity Causes and a Remedy Therefor."

The paper was then read.

(See the Paper at the end of these Minutes.)

The Chairman :

The paper next in order is by Melville Church, of Washington, D. C., entitled "Is the Entire Jurisdiction of the Circuit Courts in the Matter of Suits for the Infringement of Patents Defined by the Act of March 3, 1897?"

The paper was then read.

(See the Paper at the end of these Minutes.)

The Chairman :

We will now have the pleasure of listening to Judge Taylor, of Indiana, on the subject of "The Establishment of an Appellate Court for Patents and Copyrights."

Robert S. Taylor, of Indiana :

Mr. Chairman and gentlemen, I have not prepared any formal paper on this subject, and I propose simply to tell you what has been done and to suggest what I think might be done on this subject. Perhaps not all of you who are present to-day are familiar with what has been done by this Section. The subject first came before the Section three years ago. At the meeting held two years ago it was discussed in the address delivered by Frederick P. Fish, Chairman of the Section, and a report was submitted by a committee to which the subject had been referred by the previous meeting. I might state that the plan proposed involves, in general terms, this : The creation of a single central court of appeals in patent causes to which the causes shall go directly from the Circuit Courts instead of as now. It is proposed to create that court by the selection, from time to time, by the Chief Justice of the Supreme Court, or by the President, of members of the circuit courts of appeals ; to select a suitable number of those judges, five or seven, as may be thought best, and assign them to do duty upon the court for a certain period of years—six years has been suggested—after which they shall return to their duties in the circuit courts of appeal as before.

The presiding judge shall be appointed for life and the other judges would hold office, say, for periods of six years, taking their places at intervals of two years, so that every two years there would be two fresh members of the court.

Time will not permit me to rehearse the arguments presented in Mr. Fish's address and in the report of the committee on the subject. It is a subject which has been a long time before the lawyers and judges of this country, and I suppose there is a very general agreement upon the proposition that, for the trial of patent cases especially, the present system is extremely unsatisfactory. We have nine circuit courts for the trial of patent causes. To be sure, the Supreme Court of the United States has power to review the decisions of the courts of appeal, but that is a power in the nature of things which must be so rarely exercised that the Supreme Court has lost its power to exercise any effective control over the general course of patent decisions. A patent is a peculiar species of property, very short lived, extending throughout the entire United States, and it is of the utmost importance to patentees and to the public at large that the validity of a patent shall be determined at as early a time as possible after its grant, and that when determined it shall be once and for all for the entire country. This result is impossible to be reached by a division of the jurisdiction among nine independent courts. The decision of patent causes depends so largely upon the personal equation of the men, and the personal equation of the man depends so largely upon his education and environment, that to have nine courts all moving in parallel channels upon the general subject of patents is impossible, and we have found it so.

To these arguments it has been answered, many times, that it is an insuperable objection to the creation of a single court of patents, that judges put to work along one single narrow line of duty will necessarily become narrow themselves, technical and unfitted for that broad and comprehensive consideration of questions which is essential to the wisest administration

of the law in any department, and legislators and lawyers have been afraid to try such an experiment. The suggestion now made as to the organization of this court is, to my mind, a very happy one, and I think the Association is greatly indebted to Mr. Fish. The suggestion that the court shall be made up of judges drawn from the existing circuit courts, to hold their places for a substantial time, and yet for a limited time, appears to me completely to solve that embarrassment. The circuit court judges would come to the discharge of their duties in a court of patent appeals with preparation for the work, they would have experience already of greater or less length in the trial of patent causes, and they would be, moreover, lawyers of wide experience. The judges of the circuit courts of the United States are men of comprehensive education and broad experience and ability in the whole field of the law. We would, therefore, have a court of patent appeals made up of judges in the largest sense of the word. Moreover, these judges having discharged their duties for, say, a period of six years at Washington on the bench of the court of patent appeals, would return to the circuit court ripened and broadened in their knowledge of patent law and with increased ability to communicate to the administration of the law throughout the country uniformity and excellence of administration.

I did not mean to say quite so much as this. The subject was fully discussed in the report to which I have referred, published in the Transactions of the Association a few years ago.

A year ago last spring, by the direction of the Chairman, I sent copies of that report to a large number of lawyers and judges throughout the country asking them for an expression of opinion on the subject. I went abroad in June before I had received answers to these letters, but, before going, I directed that if answers came they should be copied in my office and the originals forwarded to Mr. Fish. I have here the copies which were thus made, and, as these letters

were written for the purpose of aiding us in our deliberations, I would like to read you a little from some of these letters, and I think that would be more interesting than anything I might say.

Letters from various federal judges throughout the country were then read.

I am myself profoundly convinced of the wisdom and importance of the suggestion that has been brought forward by the Section, though some gentlemen have expressed to me their doubt whether it was worth our while to persevere in it; but my own feeling is that if you have set about to accomplish a thing which you believe to be a good thing the way to do is to stick to it. The American Bar Association is a body of powerful influence. If the Association and the members of this Section will heartily co-operate we can bring to Congress a line of argument and opinion which will, I believe, be very highly regarded by that body.

I think our movement gathers strength as time passes. If we can go to Congress with the statement that this scheme has been before the Patent Section of the American Bar Association for six years and has been considered and reconsidered and has been presented to the whole body carefully and thoroughly, and has received the endorsement of the whole body, then the very length of time, the very years during which we have had it under consideration will be an element of strength and influence.

I took the liberty to-day, without any authority from this Section, because it did not occur to me before and it did not appear to have occurred to others, to offer a resolution in the Association referring this subject to the Standing Committee on Patent, Trade-Mark and Copyright Law with a request to bring in a report at the next annual meeting. I did it because without that we would be powerless to get the subject before the Association next year. The Association passed a resolution referring it to the committee, as I requested, and the committee will report upon it at the next annual meeting,

and, if we can rally influence enough to secure the adoption of that report by the Association next summer, we shall be able to get the matter before Congress a year from this winter.

The Chairman :

Gentlemen, there is one other paper to be presented, and that is a paper by William C. Strawbridge, of Philadelphia, "In re a Case in Relation to Notices and Circulars as to Alleged Infringement of Letters Patent for Inventions."

The paper was then read.

William C. Strawbridge, of Pennsylvania :

I should like to inquire whether Judge Taylor has any suggestion to offer in relation to this court of patent appeals; is there anything we can do now to help forward the matter?

Robert S. Taylor, of Indiana :

In reply to that I would say that by the terms of the resolution introduced by me in the convention this morning the Committee on Patent, Trade-Mark and Copyright Law is directed to make a report on the plan at the next annual meeting of the Association accompanied by any bill which they think proper for the Association to recommend to Congress. Judge Bond, the Chairman of this Section, is the Chairman of that committee this year, but the incoming President of the Association has not yet appointed the members of the committee for the ensuing year. The thought that occurred to me is that it might be well for us here to appoint a committee to co-operate with that committee of the Association. The committee ought not only to prepare a bill for recommendation next year, but they ought also to prepare a very careful and comprehensive report on the subject which shall go at length and at large into the reasons for the organization of such a court, and that report ought to be printed and distributed at least ninety days before the next annual meeting of the Association, not only to members of the Association, but to patent lawyers generally throughout the country, setting forth to them

the proposed plan and the reasons for it, and there should also be a circular sent to them inviting them to come to the Association next year and become members of it so that they can have something to say about the matter. The men who influence the American Bar Association are lawyers of influence and distinction who do not have much to do with patent law, and we do not know just what view they will take of this subject. It is, therefore, important that we should get before them a thorough exposition of the plan and the reasons for it. Besides, we should have our friends on hand in force and be able thus to effect the action we desire. Now all this will involve considerable labor for somebody.

William C. Strawbridge :

I move the appointment of such a committee as Judge Taylor has suggested.

Joseph R. Edson, of District of Columbia :

I second that motion, with the added suggestion that Judge Taylor be appointed Chairman of that committee, and that the Chairman of this Section appoint the committee.

William C. Strawbridge :

I will accept that suggestion.

Melville Church, of District of Columbia :

This same question arose yesterday and it was then stated that the Standing Committee of the Association on Patent, Trade-Mark and Copyright Law, was the spokesman of this Section. Unless it takes charge of matters of this sort I do not really see what it has to do. Therefore, is it necessary that we should have a separate committee to take charge of this matter ?

The Chairman :

The idea is, as I understand it, that we appoint a sort of sub-committee to work in conjunction with that of the Association. I think it would be a very good plan to follow.

Arthur S. Steuart :

I would heartily approve of the appointment of a special

committee by this Section. It is true that anything which this Section may want to have done will come in the form of a report from the Standing Committee of the Association, but still that committee is generally composed of representative members of this Section, and this subject is so important a one that it would seem highly desirable to follow the idea that has been suggested.

The motion was adopted.

The Chairman :

The Chair will appoint as that committee Robert S. Taylor, of Indiana; Lysander Hill, of Illinois, and Edmund Wetmore, of New York.

W. J. Roberts, of Iowa :

I am not specially a patent lawyer, but there is a matter that I would like to speak of before this Section. I have had to do with circulars in a very aggravating case and I have had something to do with preliminary injunctions; but the most aggravating thing that I have ever come in contact with is the rule in chancery which permits a complainant arbitrarily to have his case dismissed at any time before the entering of a decretal order in the case. For instance, in the case I speak of, the complainant not only circularized the entire country to a very great extent, but he compelled the defendant to take his testimony, he put in his own rebuttal, had the cause set down for hearing and then the day before the day set for final hearing he filed an application for leave to dismiss, and the court, after a very careful consideration of the question, said that it was powerless to prevent the dismissal. Now, in that case, the defendant was compelled to take one deposition—that of an expert—at an expense of over \$1000, and the cross-examination of that expert by the complainant's counsel took eight or ten days. Of course, the order dismissing the cause provided that the complainant should pay the costs and the clerk taxed for the expert one dollar and twenty-five cents a day for the time actually occupied by him on the witness stand.

Now I think that one of the remedies for doing away with some of the evils of expert testimony would be to tax in patent causes an expert witness fee, the same as is done in other causes in the state courts where doctors and lawyers and preachers are called to testify to matters pertaining to their professions. I think if the courts were authorized to tax \$50 a day against the losing party for fees for expert witnesses it would have some tendency to reduce the evils which now attend the trial of equity causes. But what I was getting at more especially was the rule permitting a claimant arbitrarily to dismiss his case. The British Parliament, appreciating the evil of which I am now complaining, has passed a statute which takes away from the complainant this right of dismissal and lodges it with the court. There, if the court sees upon the whole record that the defendant will lose any right by permitting a dismissal, and the defendant insists on a trial on the merits—as I did in the case I speak of—the defendant shall have that right.

Mr. Hill spoke very forcibly yesterday, from his side of the matter, on the subject of preliminary injunctions. Now I have been on the other side, and my client suffered in his way just as harshly as Mr. Hill's client suffered in his case. In my case the complainant by means of circulars paralyzed the trade so that they were absolutely afraid to buy anything made by my client; and yet, by means of this right to dismiss, the defendant was left powerless to have the case tried on the merits; and he is powerless yet, and I am still fighting the last suit brought, but I expect that will be dismissed, too, in September. I have undertaken to do this: Ascertaining where I could tie up by attachment a considerable sum of money belonging to the complainant, I have brought a suit by attachment in the state court charging libel and slander of my defendant's property rights, and I am seeking to obtain in a state court a verdict of a jury. I assert that the circulars were untrue because we did not infringe. That involves, to be sure, the question of a patent infringement, and I am aware

that it is a close question of jurisdiction in the state courts, but it seems to me that it is like a suit brought on a promissory note given for a patent, and the state court entertains jurisdiction for the purpose of deciding whether or not there was consideration for the note, and, if so, that the patent is invalid. Of course, the decision of the state court would be of no binding force except in that particular case.

It does seem to me that if we are going to keep up with the march of progress we ought to adopt the English statute which prevents the arbitrary dismissal of cases and which enables the court to control this circular business.

Lysander Hill, of Illinois :

I agree with the gentleman who has just spoken. I know of the case he speaks of although I have had nothing to do with it, and I know he has suffered from gross abuse ; but the remedy, it seems to me, is not in the way of doing away with the proposition that I made yesterday to facilitate the granting of preliminary injunctions, but is the remedy suggested by Mr. Roberts himself, viz., adopting the English statute. By adopting the English provision the courts before whom the cause is pending would have the right to determine whether a case should be dismissed or not.

Melville Church :

I happen to have in my bag here a copy of the English act on this subject and I will read it.

It seems to me that is a very wholesome provision and one that we might very well adopt in this country.

The Chairman :

Is there any further discussion ? If there is not, I think it would be well for this Section, owing to the large number of papers that we have had at this meeting, to make a special request of the Association for the publication of our papers in the Annual Report.

Arthur S. Steuart :

I move that the Committee on Publications of the Associa-

tion be requested to print the paper read by Judge Hill yesterday, in pamphlet form, so that we may have it distributed separately from the Transactions of the Association.

The motion was seconded and carried.

A. C. Denison, of Michigan :

I move that it is the sense of the Section that the Association publish in the Transactions the papers and the discussion entire which has been had before the Section this year, and that the Secretary of the Section communicate with the Publication Committee of the Association, on our behalf, making such request.

The motion was carried.

Joseph R. Edson, of District of Columbia :

I would like to say a few words on the subject of Congress providing by general legislation for the extension of patents beyond the term of the original grant. My attention was drawn to this subject through having been retained to prepare a bill for the relief of a patentee who had been at work some thirty odd years on a line of inventions and, notwithstanding all I said to dissuade him from making the effort,—telling him that only four patents had been extended in twenty-seven years,—he still insisted on having his application filed. In that matter I was thrown in with the members of the Senate and House Committees on Patents and I know from personal admission made to me by members of those committees that they are in favor of legislation looking to the extension of patents.

The Chairman :

The Chair would remind the speaker that this subject is not properly before the Section.

Joseph R. Edson :

I was going to conclude by asking leave to file a paper that I have prepared on this subject.

The Chairman :

If there is no objection, the gentleman from the District of Columbia may file his paper with the Secretary of the Section.

Next in order is the report of the Committee on Nominations.

The committee reported recommending the re-election of the present officers of the Section.

The report was adopted and the officers declared re-elected for the ensuing year, namely :

Lester L. Bond, Chairman.

Melville Church, Secretary.

The Section adjourned *sine die*.

MELVILLE CHURCH,
Secretary.

ANNUAL ADDRESS

BY

L. L. BOND,
OF ILLINOIS,

Chairman of the Section of Patent, Trade-Mark and Copyright Law.

Gentlemen of the Section of Patent, Trade-Mark and Copyright Law of the American Bar Association:

At our last meeting, in Denver, the Section was not very well represented, for causes which need not now be enumerated. The year has passed away about as usual, as there has been nothing radical done, either in the line of inventions or of decisions. No pioneer patents have been issued; and I use the word "pioneer" in its usual acceptance,—to wit, that of an invention which strikes out a new art or a new industry. A large number of patents have been issued, but almost entirely improvement patents,—sometimes called "perfection patents,"—which, while they are important, do not produce new machines. There have been no leading decisions, such as will stand out as landmarks in the way of interpreting the law. There were 26,388 patents issued during the year ending August 21, 1902.

Patent litigation in many circuits has fallen off materially, and this falling off in some circuits is attributed to the supposed difficulty of sustaining narrow patents; but it is more generally attributed to the consolidation of industries, which consolidation also includes a bringing together of the various patents owned by the different concerns brought into the combine. It is also partly attributed to the fact that there are very few of what are called leading patents now in existence. The foundation-patents, in nearly all of the arts, have expired, so that only improvement-patents are left, and while they are important, they are in most instances not worth litigating

to any considerable extent, as such patents are usually easily avoided by changes in the details of construction. The lines on which inventions during the last year have been most active are electrical, and there has been some activity in automobiles or horseless carriages.

There has not been much legislation in regard to patent matters. A large number of bills were introduced in Congress, but all of them failed to pass. The English act of August 17, 1901, in force January 1, 1902, extends the time for applying for patents in England, under the international arrangements, from seven months to twelve.

By the Act of Congress approved April 11, 1902, Section 4883 is revised so as to make the signing of letters patent by the Secretary of the Interior unnecessary. Patents are now issued under the seal of the Patent Office, with the signature of the Commissioner alone.

By the Act of Congress approved May 9, 1902, the law regarding design patents is materially changed; but it is only changed to make the statute accord with the decisions of the courts and of the Commissioners in relation to this class of patents. Under the old law there was some confusion as to whether mechanical or practical utility entered into a design patent. The courts uniformly held that it did not, and that design patents were only for esthetic purposes. The amendment brings out this feature clearly and eliminates several elements of uncertainty from the prior acts, and this will doubtless meet the approval of all who have anything to do with design patents, both in the courts and in the Patent Office.

I have not noted the changes in Patent Office rules or changes in classification, as those apply to solicitors of patents, rather than to attorneys practicing in the courts.

There has not been any legislation in relation to trademarks, and it was hardly expected that there would be, because whenever a change is made it will necessarily be quite an extensive one, and will doubtless amount to a thorough over-

hauling of trade-mark law. The calendar of Congress was crowded with important matters, most of which have been disposed of, so that we may now look forward to a consideration of a revision of the trade-mark laws.

Another reason for the failure of Congress to act lay in the fact that the Commission appointed by Congress to take into consideration what changes were needful for the law of trade-marks and also what were needful to make our law accord with treaty obligations, presented a divided report, which, of course, made it necessary for Congress to consider the entire subject-matter, which it heretofore has not been willing to do. If the Commission had agreed in its conclusions, doubtless an act recommended by it would have been passed; but the divided report left open all the questions to be considered. The session for this winter being what is known as the short session, the matter will probably not be taken up; but during the next session we may reasonably expect that something will be done.

Trade-mark litigation has increased considerably during these later years, but largely in the direction of unfair competition cases. The courts seem disposed to compel honest trading, so far as it may be in their power to do so.

The defects of our trade-mark law, the legislation necessary to perfect it, and various features relating to its character will be presented by the papers to be read, and they are, therefore, not here taken up. There were 1889 trade-marks registered during the year.

There has been no legislation in relation to the law of copyrights, and but very few decisions during the year.

Attempts have been made to secure additional circuit judges in several of the circuits, and particularly in the seventh, in which circuit there are three circuit judges and five district judges; and as all their districts—possibly with the exception of the western of Wisconsin and the southern of Illinois, contain important commercial cities and districts, the district judges are fully occupied with district business matters; and

as the law disqualifies a circuit judge from acting in the appellate court on any decision rendered by him at the circuit, the circuit judges are usually disposed not to disqualify themselves in the court of appeals, so that the circuit court work usually devolves upon the district judges in addition to the discharge of the duties of their own courts.

There does not seem to be any good reason why we should not have additional circuit judges to do the circuit court work in the several circuits. It is certainly not an expensive matter, so that the holding of the number of judges down to a limited number is not really a matter of economy, while it is frequently a matter of long waiting for litigants. In my judgment, this Association should lend its influence to secure the appointment of additional circuit judges. One additional circuit judge has been appointed for the second circuit.

I am happy to report that the Section is in active operation and that its affairs are looked after with much interest by the members; and it is hoped that it will be able to accomplish something in the way of legislation, particularly in the matter of trade-marks, where it is most needed.

PENDING TRADE-MARK LEGISLATION.

BY

ARTHUR P. GREELEY,
OF WASHINGTON, D. C.

The only legislation affecting trade-marks now pending before Congress, which is of special importance, is comprised in two bills known as Senate Bills 5289 and 5290, Fifty-seventh Congress, first session. These have also been introduced in the House. These bills are the result of the work of the Commission to Revise the Patent and Trade-mark Laws created by Act of Congress approved June 4, 1898, of which Judge Grosscup, of the Circuit Court of Appeals of the Seventh Circuit, Mr. Francis Forbes, of New York, and myself were members. These bills are embodied in the report of the Commission submitted to Congress November 27, 1900, and recently reprinted by Congress.

Of these two bills, Senate Bill 5290, entitled "A Bill to Regulate and Protect Marks, Trade-marks, Commercial Names and Symbols Used in Commerce and to Enforce Treaties Regarding the Same," was proposed by the majority of the Commission, Mr. Forbes and Judge Grosscup, as embodying their conclusions as to the possible extent of a trade-mark law without expressing any opinion as to the expediency of the proposed act. (Report, 60.)

The other bill, Senate Bill 5289, entitled "A Bill to Revise the Laws of the United States Relating to Trade-marks," was submitted by me, as the minority member of the Commission, as a bill which embodies my conclusions as to what is expedient to be adopted by Congress as the law of trade-marks. The majority members of the Commission agree with me that the legislation proposed by me is within the constitutional power of Congress.

In many respects the two bills are in harmony, notably in providing for registration of trade-marks used in interstate as well as foreign commerce; in the reduction of the fees for registration; in making registration more simple; and in providing for an appeal to the Court of Appeals of the District of Columbia from the refusal of the Commissioner of Patents to register a mark. In many respects there are important differences between the two bills, some of these differences being as to vital questions of the power of Congress under the Constitution and others being as to what is expedient to be embodied in a trade-mark law.

In considering this pending legislation we are met at the outset with the question, What necessity is there for any legislation on the subject of trade-marks? and the further question, What necessity exists for change in existing legislation?

The principle of the existence of a property right in trade-marks and the necessity of legal protection of that property right is now universally accepted without the need of argument, though this was not always the case. It should be distinctly borne in mind that until 1838 no court of the United States or of Great Britain had recognized this principle. The first recognition of the principle is found in the decision of Lord Chancellor Cottenham in the case of *Millington vs. Fox*, 3 Mylne & Craig 338. Prior to this decision the question had not come up before any United States courts and, so far as the courts of Great Britain are concerned, the decision in the case of *Blanchard vs. Hill*, 2 Atkins 484, 1742, holding that there could be no property right in a mark, was the controlling decision. For some time subsequent to this decision it was questioned by the courts whether the principle that there could be property in a mark or name was sound law. Prior to 1870 there was no United States statute recognizing the existence of trade-marks or making any provision in respect to their protection. Hardly more than three score cases involving the right to a trade-mark had been before the courts of this country before the passage of the law of 1870, and only

six of these had been before United States courts. But the courts, guided to a large extent by the decisions of English courts, recognized the right of property in a trade-mark and the necessity of protecting that right and proceeded to apply to trade-marks the principles of the common law regarding property, deciding the nature of the property, the conditions under which the property right could be acquired, how it could be lost and against whom and to what extent the right could be enforced, thus, by decisions covering a long period of years and rendered by the courts of a number of the states as well as by the United States courts, building up a trade-mark law.

This trade-mark law, that is the law which has for its basis the principle that the user of a trade-mark may acquire an absolute property in the mark, is to be distinguished from the doctrine of unfair competition from which it is an outgrowth. The basis of the doctrine of unfair competition is that a court of equity will always interfere to check fraud, particularly fraud upon the public and the wilful imitation of the known marks by which the goods of another are distinguished upon the market, for the purpose of passing off upon the public the goods of the imitator. Being clearly a fraud upon the public and incidentally upon the person whose marks are imitated, courts of equity will interfere to prevent repetitions of this fraud.

The remedy afforded by the courts in cases of unfair competition is satisfactory and no legislation regarding this class of cases is needed, unless it be a statute providing for a criminal remedy against the party guilty of the fraud. No doubt this doctrine of unfair competition as understood and enforced by the courts is more satisfactory, by reason of its greater flexibility, than could be any statute attempted to be drawn to cover the subject. Under the doctrine of unfair competition it matters little what the character of the mark imitated may be, whether it be a mark capable of being considered a technical trade-mark or merely a surname or the label or dress of goods. The doctrine of unfair competition applies alike to all

cases provided it appears that there was wilful and intentional imitation for the purpose of deceiving the public. Actual knowledge of the use of the mark imitated is essential to the application of the doctrine of unfair competition.

But this actual knowledge is not always easy to prove and there are many cases in which a conflict as to the right to a trade-mark arises without any question of fraudulent intent being involved. The character of marks commonly employed as trade-marks is such that it often happens that two or even more persons adopt substantially the same mark for their goods and each independently and without knowledge of the other's use, builds up a trade in the goods bearing the mark. In such cases the injury to the trade of the real owner of the mark is real and may be as extensive as in the case of intentional unfair competition.

In such cases the courts have held that "finding is having," that the first to adopt and use a trade-mark becomes *ipso facto* the owner of the exclusive right to its use, and a subsequent user of the mark, however innocent of any intent to defraud, has no right to use the mark and must cease to use it. There is no doubt that this is a necessary rule of law. Certainly it is the law, having been recognized as such by the Supreme Court as well as by Congress.

It is clear from the debates in Congress preceding the passage of the trade-mark law of 1870 and the debates preceding the law of 1881 as well, that this is the law referred to in the section of the law which reads:

"That nothing in this act shall prevent, lessen, impeach or avoid any remedy at law or in equity which any party aggrieved by any wrongful use of any trade-mark might have had if the provisions of this act had not been passed."

The Supreme Court in the decision in the case of *McLean vs. Fleming* (96 U. S. 245) as well as in other decisions, notably the decision in the *Trade-mark Cases* (100 U. S. 82), have held this to be the law. In the latter case the court says:

“The right to adopt and use a symbol or device to distinguish the goods or property made or sold by the person whose mark it is, to the exclusion of use by all other persons, has been long recognized by the common law and the chancery courts of England and of this country, and by the statutes of some of the states. It is a property right for the violation of which damages may be recovered in an action at law, and the continued violation of it will be enjoined by a court of equity, with compensation for past infringement. This exclusive right was not created by the act of Congress, and does not now depend upon it for its enforcement. The whole system of trade-mark property and the civil remedies for its protection existed long anterior to that act, and have remained in full force since its passage.

“These propositions are so well understood as to require neither the citation of authorities nor an elaborate argument to prove them.”

Yet this was not the law, so far at least as cases in which there was no appearance of fraudulent intent, prior to the decision in the case of *Millington vs. Fox*, above referred to.

That this rule of law was essentially a harsh one, liable to work serious hardships by reason of the lack of a requirement that the first adopter should give notice of his claim of right to the particular mark, was early recognized. I can hardly bring out this point better than by quoting from the dissenting opinion rendered by Judge Robertson in the case of *Burnett vs. Phalon* (9 Bos. 192, 5 Abb. Pr. R. N. S. 212, 3 Keyes 594), a suit before a New York court on the word “Cocaine” as a trade-mark for a preparation for the hair. In his dissenting opinion Judge Robertson, after referring to the common liability of everyone who palmed off upon the public his commodities as those of another man to the deceived customer and indirectly to the supplanted competitor, says:

“Equity seized on jurisdiction to prevent repetitions of the wrong, and, with its customary eagerness to amplify such jurisdiction and model the relief granted by it to every phase

of such wrong, created the doctrine of what are called trademarks. In doing so, it has nearly established a common law copyright of perpetual duration, permitting an injunction without a trial at law, calling upon the defendant for an account of his profits, and even attempting to reach what are claimed to be instruments prepared for future fraud. This may be a very healthful jurisdiction, but, without great care, its searching character may be made an instrument of wrong. Much is said of the injustice of allowing one man to avail himself of the skill and expenditure of another by false representation, which is well founded; but where, instead of using the name of the owner or vendor, strange devices and insignia are employed to indicate such ownership or source, which do so but ambiguously, and require considerable familiarity and experience with them to connect them therewith, no great sympathy is created for those using such devices.

“Were they the subjects of copyrights, or other modes of warning mankind against trespassing on a settled right, there would be greater justice in punishing the trespasser, but the most innocent may be caught unwarily in a litigation where a word is employed as a device originating in some measure from the materials used in forming a composition, as in this case, where one of the plaintiffs admits that he framed Cocaine as a word, and that it was suggested by the cocoanut oil employed in the manufacture of the article, while the discoverer of the word Cocaine claims that is a word framed according to the genius of the French language to express the extract of that oil.”

It was not in the power of the courts to provide any means for “warning mankind against trespassing upon a settled right” such as suggested by Judge Robertson. This was for the legislative power to provide.

The condition is one which has arisen in all commercial countries. The leading commercial nations of Europe have realized the necessity of the case and have met the situation *uniformly* by providing a register on which the users of trade-

marks could enter their marks and thus give notice of their claim of right thereto. Of so much importance is this notice of claim of right to a trade-mark regarded that commercial nations generally *compel* the users of trade-marks to enter them upon the public register, many nations making the penalty for failure to register the loss of right to the mark as against a later user who registers. Such laws give opportunity for the usurpation of known marks and work oftentimes a hardship against foreign owners of trade-marks who delay registration; but it must be remembered that trade-mark laws are made primarily to govern domestic trade and not for the benefit of foreigners. It is significant that every commercial country makes registration essential to the full benefit of the law and many of the leading commercial countries make ownership of the mark absolutely dependent upon and determined by registration.

For the purpose of providing a "mode of warning mankind" of the adoption of a trade-mark it is evident that it was the duty of the legislative power not only to create a public register, but, in order that the register should be of any considerable value, to provide by law means to bring about the fullest registration possible.

By reason of the lack of sufficient authority in the Constitution, it is clearly impossible for Congress to enact a law compelling all owners of trade-marks to register them. Congress can, constitutionally, make provision only regarding trade-marks used in commerce with foreign nations or among the several states or with the Indian tribes, and it is doubtful whether it can constitutionally *compel* the registration even of marks so used. But Congress may undoubtedly make registration easy and offer such advantages to registrants as would be effective to place upon the register practically all of the marks used in interstate or foreign commerce. That the necessity existed for some legislation by Congress providing for the benefit of the public of the country is, I believe, clear from the reason herein presented.

But in considering the question of the need of some legislation respecting trade-marks the necessities of foreign trade as well as domestic trade must be regarded.

Foreigners send their goods to be sold in this country and our manufacturers are seeking and finding a market for their goods in foreign countries. It is vital to the permanence of the foreign trade of our manufacturers that their trade-marks be accorded protection abroad, and we cannot refuse protection here to the trade-marks borne by imported goods.

We have a right to make such laws as we please regarding the protection of trade-marks in this country and cannot be expected to give to the foreigners fuller protection than is afforded by the law to residents of the United States. We may properly require as precedent to securing the benefit of our laws that foreign owners of trade-marks comply with the conditions required of our own people. We cannot ask more of foreign nations than that they shall accord protection to the trade-marks of our manufacturers to the same extent and under the same conditions to which and under which they protect the trade-marks of their own people.

Such reciprocal rights respecting trade-marks are secured by treaties with many of the commercial nations. They are not secured as extensively as they should be, our authorities having shown a lack of appreciation of the importance of the subject which is likely seriously to embarrass our foreign trade hereafter.

Such treaties as have been entered into between the United States and foreign nations respecting trade-marks, practically without exception, make the reciprocal protection of trade-marks conditional on their registration, the trade-marks of foreigners to be registered at Washington, the trade-marks of residents of the United States to be entered on the official register of the foreign country. Some of these treaties were negotiated before Congress had provided for the registration of trade-marks and a number of them were in existence during the interval between the decision of the Supreme Court hold-

ing the Act of 1870 invalid and the subsequent enactment in 1881 of the present trade-mark law. The necessity of such legislation as may be necessary for maintaining a register on which foreign owners of trade-marks entitled to the advantages of existing treaties may enter their trade-marks has never been questioned, nor has doubt been cast upon the validity of such legislation by any decision of any court.

The treaties provide for the registration of trade-marks by their owners. The question of ownership is one to be determined necessarily by the law of the country in which registration is sought. We may refuse to register the mark of a foreigner if it appears that the right to the mark is in a resident of this country or if the mark is not registrable under our law. So, too, we may refuse registration if the application for registration is not made in the form prescribed by our law. The foreign countries may properly refuse registration to marks not owned by residents of the United States and refuse applications for registration not made in conformity with the requirements of their laws. To this there can be no logical objection even though the requirements of foreign laws may differ from the requirements of our law. The laws of practically all foreign countries require, in order that the mark of a resident of the United States may be entered on their registers, that the applicant furnish, as proof of his ownership of the mark in question, proof of registration of the mark by him in this country. This requirement is not unreasonable. Few foreign countries recognize the first user of a mark as necessarily the owner of the exclusive right to it, even in case of their own people, and it is not to be expected that they would admit proof of priority of adoption and use in this country as proof of ownership. Proof of registration in this country is necessary to registration abroad, and as registration is by the laws of all foreign countries a condition precedent and absolutely essential to protection, it follows that the American, who desires to protect his trade-mark in foreign countries, must first

register it in the United States Patent Office. There is absolutely no escape from this requirement.

The foreign trade of the United States in manufactured articles at the time the first of these treaties was negotiated was inconsiderable. To-day the exports of the United States in manufactured articles amount, in a single year, to over four hundred millions of dollars in value and are rapidly increasing. The exports classed by the Bureau of Statistics as manufactures do not include canned goods, flour and provisions, the value of the exports of which would largely increase the amount mentioned. Practically all of the exports classed as manufactures, as well as the other goods mentioned, bear distinctive trade-marks, and the protection of these trade-marks is vital to the permanence of the trade in them. Our goods are favorably regarded in foreign countries and are, consequently, imitated extensively. The trade-marks which they bear are copied and inferior goods are palmed off as American. The injury to our trade is obvious. It both lessens sales and discredits the reputation of our goods. The only protection which can be secured for our exports is trade-mark protection, and this is dependent primarily upon registration of the trade-marks in this country.

Evidently, in the interest of our foreign trade, it is the duty of Congress to provide for the registration of the trade-marks in use in this country in order that their owners may protect them abroad. As against this obvious necessity nice questions of constitutionality should not be given such weight as to prevent our manufacturers from competing in the market of the world on even terms with foreign manufacturers.

The situation as it exists to-day existed prior to 1870, except that the importance of the foreign trade was not then realized as it is to-day.

In its own time and with a deliberation which should have been sufficient to secure the enactment of a law which would not be open to attack on constitutional grounds, Congress enacted the trade-mark law of 1870, a jumble of patent law and copyright law obscure in meaning, giving practically no in-

ducement to register, practically no protection to trade-marks not before afforded by the common law and compelling the owner of a trade-mark to pay an unreasonably heavy fee for the privilege of placing his mark on the register. The law placed, or seemed to place, large discretion as to what should be registered in the Commissioner of Patents, and this discretion was exercised in the formation of rules regarding registration which have to a large extent persisted up to the present time, rules which compelled the owner of a trade-mark to formulate a statement of the essential features of his trade-mark and restricted the protection to the essential features set forth in his statement instead of permitting the trade-marks themselves to be registered. The act itself is brief. The law regarding the registration of trade-marks is determined, not from the act, but from the rules made by the Commissioner of Patents.

In the course of time the law of 1870 was held unconstitutional by the Supreme Court. The trade-mark law of 1881 was subsequently enacted and is the law to-day. It has all of the defects of the law of 1870, except that it does not trench upon state rights. Under it "Defiance," as a trade-mark, is refused registration by one commissioner and admitted to registration by another. "Aurora" is refused registration by one Commissioner and admitted to registration by another. If your client wishes to register his trade-mark you have to tell him that it may or may not be registered according to the turn of mind of the Commissioner for the time being. At present the rule regarding statement of essential features is materially modified and is decidedly less objectionable than formerly, and the law is liberally and fairly construed. The fee remains the same, with the result that comparatively few trade-mark owners register them unless under misapprehension of the protection afforded by the law or unless they find it necessary to register as a condition precedent to registration in a foreign country.

The total number of trade-marks registered in the United States Patent Office, including registration under the law of 1870 up to the present date, is less than thirty-nine thousand.

This is probably less than a fourth of the trade-marks actually in use in the country. It is not unusual to have marks presented for registration which have been in use without registration ten, twenty, thirty or more years. The register of trade-marks should be so far complete that it should be possible to determine by a search of the register whether or not a trade-mark which a manufacturer contemplates using has become, by prior adoption and use, the property of another. Such searches of the register are frequently called for and, even with the incomplete register as it exists to-day, may result in showing that a particular mark has been registered by another and is no longer open to adoption. The register, even as it is, is of material value. In proportion, as it can be made more complete, its value will increase.

The need for a statute providing for the registration of trade-marks which shall be clear, definite and broad in its provisions, is, I believe, obvious. That the present statute falls far short of satisfying the requirement is obvious from a mere reading of it. The law should provide for the registration of every trade-mark used in the commerce which is constitutionally under the control of Congress which can be the subject of an exclusive right. The aim should be to place upon the register all doubtful marks rather than to limit the registration to those marks only which satisfy in the highest degree the strictest definition of a trade-mark.

Both of the trade-mark bills pending before Congress are drawn with these broad ends in view. The provision in both of these bills for a reduction of the fee for registration from \$25 to \$10, would, I believe, result in a very large increase of registration. The extension of the registration to marks used in interstate as well as foreign commerce opens the register to a vast number of marks not registrable under the present law. With the fees reduced there can be no doubt that a very large number of these marks would be presented for registration.

Both of the proposed bills provide for doing away with the requirement for any statement of essential features and permit

the mark itself to be registered without compelling the applicant for registration to describe the mark in words.

The bill proposed by me permits marks to be registered by "any person claiming to be" its owner and avoids the necessity for any determination by the Commission of the question of ownership in *ex parte* cases. The present law, it should be noted, has been construed at times by the Patent Office to authorize the Commissioner to refuse registration for reasons other than the reasons for refusal specified in Section 2 of the Act, on the ground that the mark offered for registration could not be the subject of ownership. On the ground that the present law permits trade-marks to be registered by their owners only and that the Commissioner may refuse registration on the ground that the proposed mark is not, in his opinion, a good trade mark, and therefore, cannot be the subject of ownership, it has frequently happened that marks which have long been in use and have been recognized in the trade as good and valuable trade-marks, have been refused registration. The law in this regard, as it has been construed, has permitted the Commissioner of Patents "to play the schoolmaster," to use an expression made use of by an English trade-mark lawyer in reference to the practice of the English office, and attempt to teach merchants of long experience in trade what they should and should not use as trade-marks, instead of carrying out the intent of the law which is to register marks actually used. The bill proposed by me, and the same is true of the majority bill, broadens the field of registration and restricts the power of the Commissioner to refuse registration, recognizing the principle that it is of more importance to the public to know what marks are actually used than it is to be instructed as to what is or is not a valid trade-mark.

Marks which by reason of the fact that they can be construed to be descriptive or geographical are undoubtedly extensively used, and, in many cases, by reason of long use may, and do, become proper subjects of property as trade-marks. These, which may be said to be of doubtful validity as trade-

marks, should, if actually used, be placed on the register in order that others may be notified that they are the subject of a claim of right and may thus be led to avoid their use. The law of France which permits any mark, whatever its character, to be placed on the register, leaving the question of the validity of the mark to be determined by the courts, is in the interest of the public and is not detrimental to any interest.

The bill which I propose gives, in case of a registered mark, power to the court to increase the damages found by the jury. It further provides that the courts in case of a registered mark may order the destruction of copies of infringing marks, labels, etc., and provides that an injunction granted in one Circuit Court may be enforced in any other circuit, as in case of an injunction granted under the copyright law, without the necessity of a new suit. The bill also gives the United States courts jurisdiction in respect to controversies arising between citizens of the same state in respect to registered trade-marks under certain conditions and provides for the exclusion at custom houses of merchandise falsely bearing a registered trade-mark.

All these advantages are given by the proposed bill only in case the trade-mark has been registered, and the purpose of incorporating these provisions in the bill is to induce registration.

I do not include in the bill which I have proposed a provision for a criminal remedy against wilful infringers. Such a provision is found in the laws of all foreign countries which have trade-mark laws, and I consider such a provision logical and, in many respects, desirable. I doubt whether Congress would enact such a provision into law. Certainly its enactment would be very strongly opposed and the opposition would be of such a character as to preclude the possibility of the passage of the bill for a long time to come. A provision for a criminal remedy against infringers may, if the demand for it is sufficiently general, be enacted as a separate measure after the registration of trade-marks has been provided for.

I have, in the bill which I have submitted, sought to modify the present law with the purpose of inducing more general registration rather than to introduce any radically new principle. So far as it could be done with clearness I have preserved the language of existing statute and I have endeavored to avoid anything which would interfere with the common law rights now enjoyed by trade-mark owners. I have recognized that the basis of ownership is use of the mark and that registration is declaratory of the claim of right not in any sense attributive of ownership. At the same time the bill, for the purpose of inducing registration, provides for securing to a registrant certain advantages which he would not obtain otherwise.

In the report of the Commission, copies of which are obtainable from Congress, the bill which I submit is accompanied by full notes setting forth with reference to each section of the bill, the old law, the reason for the change, and, so far as possible, the source of the language used.

I believe that Congress should be strongly urged to enact into a law a bill of the general tenor and effect of the bill proposed by me. That changes in the wording of the bill, as I have drawn it, may be made with advantage, I do not doubt, and they may be made without difficulty. That something should be done by Congress in the matter of trade-mark registration there is no doubt. That Congress *will* do nothing in the matter, unless the need for legislation is strongly urged upon the committees having charge of the subject, goes without saying.

CRIMINAL REMEDY FOR FRAUDULENT IMITATION OF TRADE-MARK.

BY

ARTHUR STEUART,
OF BALTIMORE, MD.

A trade-mark, in its true meaning, is but a substitute for the name or signature of the manufacturer, vendor or proprietor of particular goods or business. It is even more than his signature—it is a guarantee that the goods upon which it appears are of the character and quality to which the proprietor usually applies the mark. It is the sign manual of the character, the skill and the honesty of the manufacturer. It represents his reputation. It is esteemed as he is esteemed; it is disparaged as he is disparaged. Every effort of an honest man to live rightly, to deal fairly, to sell money's worth for money's value, to produce goods of high quality and sell them for a fair price, produces in time a good reputation which becomes attached to the brands and trade-marks which are associated with his goods, and is to the right-minded man a priceless possession.

Confidence is a plant of slow growth, but when it has grown and blossomed and borne abundant fruit in a large and profitable trade to the manufacturer, who has labored long and faithfully to produce it, it is an asset of value proportionate to the extent of his trade.

The good-will of his customers, cultivated through long years of effort, may be relied upon to produce a satisfactory return for his labor, enterprise and invested capital quite as safely as any other form of property; but this good-will, while very precious and valuable to its possessor so long as its integrity remains unimpeached, is of a very ephemeral nature. It is very easy for the dishonest and covetous man, who would

steal some part of his neighbor's profit, to injure the good-will of his business, and with it the reputation of its owner.

The forgery of a trade-mark and the application of the forged brand to false goods not made by the owner of the mark, and of different character, is quite as much a moral crime as the forgery of a commercial signature and the theft of the funds of the person whose name is forged by means of the forgery; but the forgery of the trade-mark is far more injurious to the owner than the forgery of his commercial signature. The injury in the first place is great in proportion to the frequency of its occurrence. In the case of the forgery of a commercial signature the forgery seldom extends beyond one or two instances, while in the case of the forgery of a trade-mark the multiplication of the forgery usually extends to several thousands, and often to very many thousands. Then, too, the injury is great in proportion as it is undiscovered. In case of the forgery of a commercial signature the forgery is always soon discovered, and the persons who are affected by it are apprised of the forgery, and the owner of the signature suffers no other injury than the direct pecuniary loss—his reputation is not affected. In the case of the forgery of a trade-mark it is impossible that the purchasers of the spurious goods, who are the trade-mark owner's customers, should discover in many cases the fact that the goods they buy are spurious. They will take them as they find them and judge them by their character and quality. If the character and quality be inferior, as they are almost certain to be, then the confidence which the customer has theretofore had in the brands and guarantees which they were supposed to carry, will be destroyed, and once destroyed, in the absence of a knowledge of the forgery, it will be almost impossible for the owner of the mark to re-establish it—partly because he cannot reach the customer for explanation and also because the good-will and custom of the customer once transferred to another firm cannot usually be recovered.

It would appear, therefore, that if the forgery of a commer-

cial signature is treated as a legal crime, the forgery of a trade-mark should be treated in the same manner.

An effort is being made to secure the passage by Congress of a new national trade-mark law. One of the bills proposed by the Trade-mark Commission contains a criminal remedy while the other does not. The bill proposed by the minority of the committee appears to me to be the more desirable because its fundamental basis is the acquisition of title to a trade-mark by adoption and use. This is in accordance with the common law of the United States. The bill proposed by the majority of the committee, while not very clear on this point, seems to be in derogation of the common law in requiring the registration of trade-marks, and there is serious danger that such would be the interpretation given to it in practice. The former of these bills does not contain a criminal remedy—the latter does.

I understand that the author of the minority report is not unfavorable to a criminal remedy, but has expressed the opinion that such a remedy would meet with serious opposition by Congress, and he thought it wiser to ask for what could be secured than to ask for all that was desired.

There are two answers to this position :

First. The American Bar Association and the Trade-mark Commission, it is respectfully submitted, should not be controlled by motives of mere expediency. Such legislation as is proposed should be the wisest and most scientific that can be devised. Let us do our full duty in proposing legislation and then leave the responsibility of refusing to enact it with Congress.

Second. Is there any good reason to suppose that a provision for a criminal remedy in a national trade-mark bill would meet with determined opposition in Congress? I doubt it very much. Why should there be any such opposition? It has been said that many members of Congress are opposed to increasing the criminal jurisdiction of the United States courts, and yet almost every general law enacted by Congress contain-

ing provisions for rights and remedies has criminal provisions, and no serious opposition was developed at the time of their passage.

The postal laws, the internal revenue laws, the interstate commerce law, the navigation laws, and even the copyright and design patent laws, have criminal provisions, and there was no opposition to their passage by Congress and no public sentiment opposed to them and to their enforcement.

The demand for a criminal remedy for the wilful forgery of a trade-mark seems abundantly manifest from the legislation of the several states upon the subject. Forty-two states have enacted trade-mark legislation in all of which a criminal remedy is provided for the wilful forgery and utterance of forged trade-marks; but almost all of these states require local registration as a condition precedent to a resort to the criminal remedies of the local law, and in some states registration is required, not only in the office of the Secretary of State, but also in the county where the remedy is sought.

The penalties vary in almost all states. Fines are imposed, ranging from one dollar to five thousand dollars, payable to the state, for a first offence. In many cases the fines are doubled or otherwise increased for repeated offences.

In Texas each day's continuance after notice is made a separate offence.

In addition to fines payable to the state the laws of some states permit forfeiture of from \$25 to \$100 for each offence, payable as compensatory damages to the owner of the forged mark. In many cases provision is made for forfeiture and destruction of goods bearing a forged mark, and in almost all cases provision is made for the punishment of the offender by imprisonment in the county jail or penitentiary for periods ranging from one day to twenty years.

An analysis of the state laws, so far as penalties are concerned, is appended to this paper.

It may be said, if there is such abundant criminal remedy for the relief of the trade-mark owners, why enact a national

law? The answer is to be found in the great inconvenience and hardship imposed upon trade-mark owners by requiring them to register their trade-marks in forty different states in conformity with the provisions of forty different statutes, paying forty different fees, and then compelling them to assume the prejudicial position of a foreigner pursuing a local citizen for an offence the moral magnitude of which the local court cannot always be relied upon to appreciate.

The reputable trade-mark owner, who by honesty and fair dealing has built up for himself and his goods an enviable reputation, is entitled to the highest degree of consideration and protection at the hands of the law-makers. If his condition and the security of his rights can be improved by national legislation within the jurisdiction of Congress, by the enactment of a national law applicable to all states and providing for registration once and for all, at one place, under a uniform practice, and with uniform remedies of a criminal nature, enforceable by the United States courts, it would seem to be the duty of the law-making power to enact such a law at the demand of the trade-mark owners of the country.

The forgery of a trade-mark and the utterance of the forgery seems by general consent of the nations of the world to be regarded as a crime. In almost every civilized nation, with hardly an exception, the counterfeiting of a trade-mark and the sale of goods bearing the counterfeited mark are punished with great severity. A fine of from \$10 to \$2000; confiscation of all goods bearing the counterfeited mark, and the destruction of marks; publication of the decree which may be rendered, at the expense of the convicted forger; forfeiture of various sums by the forger to the benefit of the owner of the forged mark—are some of the penalties. The offender may even be disfranchised besides being imprisoned at hard labor for periods varying from one day to any period the court may decide; the term is, of course, limited in some countries. An analysis of these remedies is appended to this paper.

The only question remaining is the question of form, and surely there should be no difficulty in settling the form, if the Trade-mark Commission and the Committee of the American Bar Association will co-operate in an earnest and determined effort to agree upon some propositions which can be submitted to Congress as receiving the approval of all parties. It is a strange and astonishing spectacle to see a Commission appointed by Congress to suggest trade-mark legislation unable to agree upon the form of legislation to be suggested, and neither the majority nor the minority of the Commission able to agree with a representative committee of this Association, so that three separate and diverse bills are presented to Congress, with the result that nothing can be accomplished.

The subject is a comparatively simple one. The various interests have got far enough to formulate their own ideas in the draft of three separate bills; now let them get together and agree upon something which they can all recommend, and there would be no difficulty in having it enacted by Congress.

APPENDIX A.

TRADE-MARK INFRINGEMENT—CRIMINAL PROVISIONS IN THE STATES OF THE UNION.

ARIZONA.—Infringement must be wilful.

Punishment.—Imprisonment in county jail not less than three months nor more than one year, and fine of not less than \$100 nor more than \$200, or by fine and imprisonment.

ARKANSAS.—Infringement must be wilful.

Punishment.—High misdemeanor. Fine not exceeding \$1000 or imprisonment not exceeding one year, or both, and the offender shall also be liable to action for damages.

CALIFORNIA.—Infringement must be wilful.

Punishment.—Misdemeanor. Punishment not stated.

COLORADO.—Use of another's trade-mark sufficient proof of guilt.

Punishment.—Fine of not more than \$500 or imprisonment for not more than three months or both.

CONNECTICUT.—Infringement must be wilful.

Punishment.—Imprisonment in county jail not less than three months nor more than one year or fine of not less than \$100, nor more than \$200, or both.

DELAWARE.—Infringement must be wilful.

Punishment.—Imprisonment in county jail not less than three months nor more than one year or fine of not less than \$50, nor more than \$100 or both.

FLORIDA.—Infringement must be wilful.

Penalty.—Imprisonment not exceeding twelve months or fine not exceeding \$100. Whoever *sells* any goods bearing a trade-mark, knowing the same to be forged, shall be punished by imprisonment not more than six months or by a fine not exceeding \$50.

GEORGIA.—Infringement must be wilful.

Penalty.—Misdemeanor. Damages resulting from use of trade-mark; defendant shall pay to plaintiff profit derived from the wrongful use of complainant's mark, and all goods bearing counterfeited mark shall be seized and destroyed.

IDAHO.—Infringement must be wilful.

Penalty.—Misdemeanor. Fine not more than \$100, or imprisonment not more than three months.

ILLINOIS.—Infringement must be wilful.

Penalty.—Fine of not less than \$100 nor more than \$200, or imprisonment for not less than three months nor more than one year, or both fine and imprisonment. Also damages and profits.

INDIANA.—Infringement must be wilful.

Penalty.—Imprisonment in the penitentiary for not less than one year or more than two, or a fine of not less than \$1000 or more than \$2000.

IOWA.—Infringement must be wilful.

Penalty.—Imprisonment in the county jail not more than thirty days, or a fine of not less than \$25, or more than \$100.

KANSAS.—Wilful infringement.

Penalty.—Infringer shall pay to owner of mark not exceeding \$25 for each offence.

LOUISIANA.—Wilful infringement.

Penalty.—Fine of not more than \$100 or imprisonment for not more than three months.

MAINE.—Wilful infringement.

Penalty.—First offence, fine not exceeding \$100 or imprisonment for less than one year, and for a second, or each subsequent offence, fine of not less than \$100, nor more than \$500, and imprisonment for not less than sixty days, nor more than three years.

MARYLAND.—Wilful infringement.

Penalty.—Misdemeanor. Imprisonment not less than three months nor more than one year, or a fine of not less than \$100 nor more than \$500 or both, in the discretion of the court.

MASSACHUSETTS.—Wilful infringement.

Penalty.—Fine not exceeding \$200 or imprisonment not exceeding one year, or both fine and imprisonment.

MICHIGAN.—Wilful infringement.

Penalty.—Misdemeanor. Fine of not less than \$10 nor more than \$100, or imprisonment in county jail for a period not exceeding ninety days, or both, such fine and imprisonment in the discretion of the court.

MINNESOTA.—Wilful infringement.

Penalty.—Fine of not more than \$100 or imprisonment for not more than three months.

MISSISSIPPI.—Wilful infringement.

Penalty.—Misdemeanor. Fine not exceeding \$500 or imprisonment in the county jail not less than three months nor more than one year.

MISSOURI.—Wilful infringement.

Penalty.—Misdemeanor. Imprisonment in the county jail for a period of not less than three months nor more than twelve months or fine not less than \$100 nor more than \$5000, or both such fine and imprisonment.

MONTANA.—Wilful infringement.

Penalty.—Misdemeanor. Complainant shall be awarded damages, and defendant shall also pay profits derived from fraudulent use of trade-mark. No criminal remedy.

NEBRASKA.—Wilful infringement.

Penalty.—Imprisonment in the penitentiary for any period of time not exceeding twenty years nor less than one year, and a fine not exceeding \$500.

NEVADA.—Infringement.

Penalty.—Misdemeanor. Fine not less than \$25 nor more than \$500, or imprisonment in county jail for not less than five days nor more than thirty or both such fine and imprisonment and also for all damages incurred.

NEW HAMPSHIRE.—Wilful infringement.

Penalty.—Imprisonment in county jail for a term of not less than three months, nor more than one year, or a fine of not less than \$100 nor more than \$200, or both.

NEW JERSEY.—Infringement.

Penalty.—Fine of not less than \$200 and not more than \$500, also profits and damages.

NEW YORK.—Wilful infringement.

Penalty.—Misdemeanor. \$100 for each violation of the law. For refilling of bottles, boxes, siphons, kegs, etc., containing a registered mark, the punishment for the first offence is imprisonment for not less than ten days nor more than a year, or by a fine of fifty cents each bottle, box, etc., or by both fine and imprisonment, and for each subsequent offence by imprisonment for not less than twenty days nor more than one year or by a fine of not less than \$1 nor more than \$5

for each and every box, bottle, etc., or by both fine and imprisonment.

NORTH CAROLINA.—Wilful infringement.

Penalty.—Fine of not less than \$50 and not exceeding \$1000 or imprisonment of not less than thirty days or more than five years, or both fine and imprisonment.

NORTH DAKOTA.—Wilful infringement.

Penalty.—Misdemeanor. Fine of not less than \$100 and not exceeding \$1000.

OHIO.—Wilful infringement.

Penalty.—Fine of not more than \$500 or imprisonment not more than twelve months, or both.

OKLAHOMA.—Wilful infringement.

Penalty.—Fine of not more than \$100, or imprisonment for not more than three months.

OREGON.—Wilful infringement.

Penalty.—Imprisonment in the county jail not less than one month nor more than six, or to be fined not less than \$20 nor more than \$300.

PENNSYLVANIA.—Wilful infringement.

Penalty.—Misdemeanor. Fine not exceeding \$100 and imprisonment not more than two years.

SOUTH DAKOTA.—Wilful infringement.

Penalty.—Misdemeanor. Punishment prescribed by law for misdemeanors and in addition must pay to the aggrieved party \$100 for each offence.

TENNESSEE.—Wilful infringement.

Penalty.—Fine of not more than \$100, or imprisonment for not more than three months.

TEXAS.—Wilful infringement.

Penalty.—Fine of not less than \$25 nor more than \$100. Each day's violation of this law shall be considered a separate offence.

UTAH.—Wilful infringement.

Misdemeanor. No penal remedy.

VERMONT.—Wilful infringement.

Penalty.—Fine not exceeding \$1000 or imprisonment not exceeding one year or by both.

VIRGINIA.—Wilful infringement.

Penalty.—Fine of not more than \$100 or imprisonment for not more than three months.

WASHINGTON.—Wilful infringement.

Penalty.—Not more than \$100 or imprisonment for not more than three months.

WISCONSIN.—Wilful infringement.

Penalty.—Imprisonment in the county jail not more than six months or fine not exceeding \$100.

WYOMING.—Wilful infringement.

Penalty.—Fine not exceeding \$200 or imprisonment not exceeding one year, or both such fine and imprisonment.

APPENDIX B.

TRADE-MARK, INFRINGEMENT, CRIMINAL PROVISIONS IN FOREIGN COUNTRIES.

ARGENTINA.

1. *Offence.*—Counterfeiting and using counterfeited mark ; fraudulent imitation ; knowingly using another's mark or one fraudulently imitated ; knowingly selling or placing on sale or abetting the sale of counterfeited marks or selling authentic marks without the knowledge of proprietorship.

Penalty.—Fine 20 to 500 Argentine dollars and from one month to one year imprisonment ; on second offence, penalty doubled.

Sentence, Cost, etc.

Fines payable to School Fund of Precinct where offence committed ; publication of sentence at the expense of offender ;

an attempt to infringe not subject to criminal procedure but renders all instruments used for infringing liable to summary destruction.

Limitations. Three years from first or second offence.

AUSTRIA.

1. *Offence*.—Counterfeiting or other unauthorized use.

Penalty.—500 to 2000 florins or imprisonment three months to one year, or both.

BELGIUM.

Offence.—Counterfeiting, fraudulent use, application or sale ; repetition of offence increases penalty.

Penalty.—Fine 26 to 2000 francs, or imprisonment eight days to six months, or both ; confiscation of goods and destruction of counterfeited mark may also be decreed.

Process. Party aggrieved alone can institute suit ; civil remedy also.

BRAZIL.

1. *Offence*.—Unauthorized reproduction or use of mark.

Penalty.—Fine 500 to 5000 milreis and imprisonment one to six months.

2. *Offence*.—Unauthorized use of arms and insignia, and the use of offensive marks or those deceptive as to origin.

Penalty.—Fine of 100 to 500 milreis.

Process, etc. Civil remedy also.

BULGARIA.

Offence.—Knowingly imitating another's mark or offering for sale goods carrying mark so imitated.

Penalty.—Fine 100 to 1000 francs.

Process, etc.—Civil remedy also.

CANADA.

Offence.—Counterfeiting or unauthorized use or application of mark, and knowingly selling goods marked with fraudulent intent.

Penalty.—Fine \$20 to \$100 and costs, payable to proprietor of mark.

Process, etc. Owner of mark or authorized agent alone can institute suit; civil remedy also.

CHILI.

Offence.—Counterfeiting or fraudulent use of a registered mark.

Penalty.—According to penal code.

COSTA RICA.

Penalty.—See penal code.

DENMARK.

Offence.—Knowingly in whole or in part using another's mark on goods.

Penalty.—Fine 200 to 2000 crowns; on repetition of offence, fine or imprisonment and compensation to owner; destruction of goods or their covering.

Process, etc. Suit at instance of party aggrieved; prosecutions treated as public police matters.

DUTCH EAST INDIES.

Offence.—Knowingly importing, selling, or offering for sale goods bearing falsely the mark of another.

Penalty.—Fine not exceeding 600 florins, or imprisonment of three months or more.

DUTCH WEST INDIES.

Offence.—Knowingly importing, selling or offering for sale goods bearing falsely the mark of another.

Penalty.—Fine not exceeding 600 florins, or imprisonment of three months or more.

FINLAND.

Offence.—Wilful and fraudulent use of, or a substantial imitation of, or sale of, goods bearing another's mark.

Penalty.—Fine 50 to 1000 marks, or imprisonment not exceeding one year; marks may be ordered to be destroyed even if goods bearing them must also be destroyed.

FRANCE.

Offence.—Counterfeiting, imitation, or unlicensed use of another's mark.

Penalty.—Fine 50 to 3000 francs, or imprisonment one month to three years; may be doubled on second offence within three years, and offender disfranchised; confiscation or destruction of goods may also be ordered.

Process, etc. Criminal procedure applies only to registered marks; for unregistered marks there is civil redress.

GERMANY.

1. *Offence.*—Knowingly using the mark of another.

Penalty.—Fine of 7L. 10s. Od. to 250L., or imprisonment not exceeding six months; civil remedy also.

2. *Offence.*—Fraudulent using another's mark without permission, or selling goods fraudulently so marked.

Penalty.—Fine of 5L to 150L, or imprisonment not exceeding three months; civil remedy also.

3. *Offence.*—Wrongfully using with intent to deceive, the mark of another, or selling goods so marked, or using the State Coat-of-Arms, and marks of a similar character.

Penalty.—Fine of 7L to 250L, or imprisonment not exceeding six months.

Process, etc. Action begun by petition; injured party can publish sentence at expense of party condemned.

GREAT BRITAIN.

1. *Offence.*—False assertion of registry.

Penalty.—Fine of 5L.

2. *Offence.*—Unauthorized use of Royal Arms.

Penalty.—Fine of 20L.

3. *Offence.*—Counterfeiting or unauthorized use of another's mark.

Penalty.—Fine or imprisonment varying according to circumstances.

GREECE.

Offence.—Counterfeiting, imitating, fraudulently using, or selling goods fraudulently marked.

Penalty.—Fine not more than 1000 drachmas, or imprisonment for six months or more, or one of said penalties and indemnity; repetition of offence within five years may cause penalty to be doubled; fraudulent marks may also be destroyed.

GUATEMALA.

Offence.—Counterfeiting, unauthorized use and sale of goods wrongfully marked, or sale of counterfeited mark.

Penalty.—Under the Criminal Code.

Process, etc. Civil remedy also.

HOLLAND.

Offence.—Knowingly importing or selling or offering for sale goods falsely bearing another's mark.

Penalty.—Fine not exceeding 600 florins or imprisonment for three months or more.

HUNGARY.

Offence.—Counterfeiting or unauthorized use of another's mark.

Penalty.—Fine of 500 to 2000 florins; repetition of offence followed by fine and imprisonment.

INDIA.

Offence.—Infringement governed by the Penal Code, and is a non-compoundable offence.

ITALY.

1. *Offence.*—Fraudulent use of another's mark.

Penalty.—Fine of 50 to 3000 liras, and in some cases imprisonment of three to eighteen months.

2. *Offence*.—Counterfeiting another's mark.

Penalty.—Fine of 500 to 5000 lires, and imprisonment of from one month to two years.

3. *Offence*.—Importation of goods falsely marked.

Penalty.—Fine of 500 to 5000 lires, or imprisonment of from one month to two years.

JAPAN.

Offence.—Knowingly counterfeiting a registered mark, or using another's mark without right.

Penalty.—Fine not less than 10 nor more than 100 yen, or imprisonment from fifteen days to six months; goods unlawfully marked may be destroyed when the mark is inseparable from them.

Process, etc. Civil remedy also.

LUXEMBOURG.

Offence.—Counterfeiting, fraudulent use or sale of another's mark.

Penalty.—Fine 26 to 2000 francs, or imprisonment eight days to six months, or both.

MEXICO.

Offence.—Infringement or counterfeiting of registered marks.

Penalty.—Governed by Penal Code.

Process, etc. Civil remedy also.

NEWFOUNDLAND.

Offence.—Forging a trade-mark, or falsely applying so as to deceive, or making or selling dies, blocks, etc., used for the purpose of forging marks, or causing any of said things to be done.

(a) *Penalty*.—On conviction after indictment, imprisonment not exceeding two years, or a fine, or both.

(b) *Penalty*.—On summary conviction, imprisonment not exceeding four months, or a fine, not exceeding \$100. Forfeiture of all goods wrongly marked and destruction of mark,

are in court's discretion. A subsequent conviction (summary) subjects offender to six months' imprisonment or a fine of \$200.

NORWAY.

Offence.—Wilful and unlawful use, or imitation of a registered mark.

Penalty.—Fine of 2000 crowns, or imprisonment, coupled also with indemnity to the injured party in every case.

PERU.

Offence.—Usurpation of the right of property in a new mark belonging to another.

Penalty.—Fine of 25 to 500 soles, or imprisonment of from forty days to six months.

PORTUGAL.

1. *Offence.*—Counterfeiting and improper or fraudulent use.

Penalty.—10,000 to 100,000 reis, or by both a fine and imprisonment of from one to six months.

2. *Offence.*—Simulation, or use of a simulated mark.

Penalty.—5000 to 50,000 reis, or both fine and imprisonment of from one to three months.

ROUMANIA.

1. *Offence.*—Counterfeiting and improper use.

Penalty.—Fine of 50 to 2500 francs, or imprisonment three months to three years, or both.

2. *Offence.*—Fraudulent imitation less than counterfeiting.

Penalty.—Fine of 50 to 1500 francs, or imprisonment one month to one year, or both.

3. *Offence.*—Failure to place on goods an obligatory mark.

Penalty.—50 to 1000 francs, or imprisonment fifteen days to six months, or both.

RUSSIA.

1. *Offence.*—Unlawful imitation of a registered mark, or the use or sale of goods marked therewith.

Penalty.—Imprisonment of four to eight months; confiscation and destruction of goods.

2. *Offence.*—Use of totally forbidden mark, or sale of goods marked therewith.

Penalty.—First offence, fine not over 100 rubles; each repetition, not over 200 rubles; destruction of goods.

Process, etc. The owner of mark can alone institute proceedings.

SERVIA.

Offence.—Counterfeiting and fraudulent use, or importation of goods fraudulently marked.

Penalty.—Fine of 50 to 500 dinars for benefit of party injured; second offence doubles penalty, and for a third, imprisonment is imposed.

Process, etc. Damages are demandable in lieu of a fine.

SPAIN.

Offence.—Counterfeiting or improper use, or sale of goods bearing mark.

Penalty.—Fine of 15 to 45 pesos; in default of payment of fine one day's imprisonment for each peso unpaid.

SWEDEN.

Offence.—Unlawful application of a mark, or the sale or exposing for sale of goods so marked.

Penalty.—Fine 20 to 2000 crowns, or imprisonment one month to two years in aggravated cases; destruction of goods may also be ordered, and compensation in damages.

SWITZERLAND.

Offence.—Wilful counterfeiting or sale or exposure for sale, or abetting any of these things, or refusal to declare origin of goods wrongly marked.

Penalty.—Fine of 30 to 2000 francs, or imprisonment three days to one year, or both; on repetition of offence penalty is doubled.

Process, etc. Civil remedy also.

TURKEY.

1. *Offence*.—Counterfeiting and fraudulent use.

Penalty.—Fine of 2 to 50 pounds, or imprisonment one to six months, or both; on repetition within five years, confiscation.

2. *Offence*.—Fraudulent alteration in mark, false indication of origin or sale of goods wrongly marked.

Penalty.—Lesser penalties.

3. *Offence*.—Failure to apply a mark declared obligatory also punishable.

VENEZUELA.

Offence.—Fraudulently reproducing, falsifying, copying, imitating, or unlawfully using a registered mark.

Penalty.—Fine of 50 to 200 bolivars, and imprisonment of one to two months.

PRELIMINARY INJUNCTIONS IN PATENT SUITS

BY

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At the time when the Constitution of the United States was framed, the useful arts were indebted to America for no practical improvements of value except Franklin's lightning-arresters and stoves. Every other art that was in use in this country had been borrowed from abroad, and in its new home retained the same crude forms that had prevailed in Europe for centuries. Locomotion found its highest expression in the old-fashioned stage-coach; motive power, in running water and the winds; textile manufactures, in the domestic spinning-wheel and hand-loom, with here and there a fulling-mill like that which 300 years ago proved so disastrous to Don Quixote's faithful squire; agriculture, in the hoe, the wooden plow, the scythe, the sickle, and the hand rake; and so on, through the whole category. America was a land of small farms. Her largest cities were mere villages. Her commerce was practically confined to the coasting and West India trade. Large manufacturing establishments were impossible, because, through the absence of transportation facilities, their source of supply was closely limited, and, unless they were situated on navigable water, the market for their output was necessarily confined to their immediate neighborhood. An old-fashioned saw-mill and grist-mill were to be found in almost every community. In the larger villages, an iron foundry, or a potter's wheel, was not unknown. Along the sea coast, a few distilleries turned West India molasses into New England rum, while in the mountainous interior, the same agency enabled our fathers to slake their thirst from the juices of their rye, corn and wheat fields. If we add to this list a few small and

crude smelting furnaces, scattered along through the Middle States, and some old-fashioned tobacco presses, we shall complete the enumeration of our manufacturing industries at that period. Our annual export of manufactured goods, including rum, tobacco, cotton and lumber, was somewhat less than a million dollars. It was not known till sixty years later that steel could be produced from American ore, and even at that late period, the discoverer, James Park, Jr., of Pittsburg, was put under guardianship as a lunatic, for announcing the discovery and endeavoring to follow it up by the practical production of American steel.

For many years prior to 1789 the industrial arts had remained substantially as stationary in this country as in China and Persia. Before the Revolution, the policy of Great Britain had been to suppress, as far as possible, the growth of manufactures in her colonies; and, besides, neither in the colonial period nor in the period of the Confederation, was there any inducement to the making of inventions and discoveries, because no system of rewards had been established for the encouragement of such efforts. Practically, for the inventor on this side of the Atlantic, protection could be obtained only in and for the British Isles—and they were so remote as to be substantially inaccessible to the ordinary American citizen. Even if a colonial legislature, or one of the states under the Articles of Confederation, had, in any instance, granted a patent, its scope was necessarily limited to the colony or state that granted it, and there the sparseness of population, dearth of manufactures and debased condition of the currency rendered it of no value. Thus the useful arts in this country were bound hand and foot against the possibility of making any independent progress, and our colonial and confederated forefathers were obliged to content themselves with following after European invention at a long distance in the rear, with no prospect or hope of catching up with the slow-moving procession. The prevailing conditions seemed to limit the mechanical and industrial development of

America to a feeble and unpromising movement along the same old lines. She seemed destined merely to pick up the crumbs of mechanical improvement which might fall to her from foreign tables.

But the statesmen who framed the Constitution had other and far different plans for the consolidated republic which they were creating. Probably no men that ever lived had studied the history and science of human government more exhaustively and from such deep research had come to understand the true principles of government more thoroughly than Hamilton and Madison, who impressed their knowledge, their wisdom and their genius upon every part of the new Constitution. They were, on the one hand, absolutely familiar with the weaknesses and defects of the old colonial and confederate systems, and with the causes and evil consequences thereof; while, on the other hand, they clearly saw, as we see now, that the growth and strength of a great continental nation, such as they were forming, depended upon its manufactures no less than upon its commerce and agriculture. They found its agriculture limited by the limitations of its commerce and manufactures; and its commerce limited by the limitations of its agriculture and manufactures. Of the great industrial trinity, agriculture, commerce and manufactures, the development of the latter, therefore, was clearly of supreme importance, because, without its aid, both of the others were crippled; but they wisely planned to develop all three coincidently, by removing from American commerce its previous impediments, stimulating invention by patent laws, and guarding American manufactures by a tariff system which could at will be made protective to any extent desirable. It is an interesting fact that the first tariff act, passed by the Congress of the United States at its first session, and approved by Washington, July 4, 1789, was a protective tariff statute, commencing with a preamble which, in the following words, declared the general purposes of all our subsequent tariff legislation: "Section 1. Whereas it is necessary for the support of govern-

ment, *for the discharge of the debts of the United States and the encouragement and protection of manufactures*, that duties be laid on goods, wares and merchandise imported: Be it enacted," etc., etc. (1 Stat. at Large, 24). The same Congress, at its second session, April 10, 1790, enacted our first patent statute (1 Stat. at Large, 109). The union of all the states into one consolidated nation had rendered it possible, for the first time in the history of this country, to establish a patent system of any material value to the inventor or the public.

The end which the constitutional convention had in view in adopting paragraph 8 of Section 8, Article 1, was clear and definite. The primary purpose was to promote the progress of the useful arts in this country by stimulating the production, publication and general adoption and use of improvements in machinery, processes and articles of manufacture. Patents were simply a means to that end. A system of direct money rewards for the making of new and valuable inventions was clearly impracticable, because it would inevitably lead to gross corruption and abuse, and could not be administered with any reasonable degree of justice. The experience of England for a century and a half had shown that a system of indirect pecuniary reward, by granting to the inventor for a limited period the exclusive right to all the profits growing out of the manufacture, sale or use of his invention, was not only a powerful stimulus to the exercise of the inventive faculties, but had the further advantage of easy and fair administration, and the great merit of automatically proportioning the extent of the reward to the importance and value of the invention itself, and to the energy and skill of the patentee or his representatives in bringing it into popular use. As compared with any other scheme of rewards, such a system is absolutely unobjectionable. It takes from the public nothing to which they ever had any right, or of which they ever had even any knowledge. It requires of the government nothing except the honest and fair protection, by its courts, of the ex-

clusive privilege, during the full term agreed upon. It is the only practicable system which the ingenuity of man has been able to devise for effectuating the great purpose of the makers of the Constitution, the forced development of the useful arts by the stimulation of invention and discovery; and they adopted it in terms which, without mentioning the word "patent," define both their purpose and the chosen means for effecting it, in language of such exquisite clearness and precision as to obviate for all future time the necessity for judicial interpretation or explanation.

"Section 8. The Congress shall have power . . . Eighth. To promote the progress of science and useful arts by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries."

Under such a constitutional provision, as held by the Supreme Court in *Grant vs. Raymond* (6 Pet. 218), and other cases, patents issued for new inventions are *contracts* between the government and the patentee, by which the government agrees "*to secure*" to him, for the term of his patent, "the exclusive right to his discovery" in consideration of his immediately making the invention known to the public and surrendering the exclusive use of it at the end of the stipulated period of protection. The government grants nothing to him, for it has nothing to grant—he is already in possession of the invention, with the exclusive right to use it so long as he can keep it secret. In its final analysis, therefore, a patent is nothing more nor less than the legal evidence of such a contract, identifying the invention, signed by the inventor and the representative of the government, and authenticated by the seal of the Patent Office, guaranteeing on the part of the government that if the inventor faithfully performs his part of the contract and applies for protection through the federal courts, they will, for the term of seventeen years, prevent anybody else from making, selling or using the invention without the consent of the patentee or his assigns. Of course, if the invention turns out to be old, or if the specification is

fraudulently made insufficient to disclose and identify it, the consideration totally fails, and the promise of protection is void. Otherwise, the government is bound, both at law and in honor, to fulfill both the spirit and the letter of its agreement. By that contract, says the Supreme Court in *Grant vs. Raymond* (*ubi supra*), "the public faith is pledged" to secure to the patentee the exclusive enjoyment of his invention during the entire term of the patent, and the court adds: "That sense of justice and of right which all feel, pleads strongly against depriving the inventor of the compensation thus solemnly promised."

For the purpose of emphasis, let me repeat: A patent grants nothing—it is simply a *promise* to keep unauthorized persons out of the field of competition for seventeen years. If, during any portion of that period, they are not excluded from the field, the promise is, *pro tanto*, violated. The courts are clothed with full power to enforce such exclusion.

How does the government keep its promise? I answer that it has for many years shamefully disregarded its obligations, and has been guilty of systematically withholding from the patentee in every instance a very material portion, and in some instances the whole, of that protection which it solemnly promises not merely to grant, but to "*secure*," to the patentee, his heirs and assigns, during the entire term of the patent.

Who is responsible for this shameful violation of national obligations? Not the legislative nor the executive, but the judicial department of the government.

Congress is entirely without fault in the matter. From the very beginning it has done everything that could reasonably be expected of it to give full effect to the patent clause of the Constitution. In less than one year after the inauguration of Washington, it gave the country a patent system, and, as experience disclosed defects or suggested improvements, it has continued from time to time ever since to pass amendatory acts for the purpose of adding to the vigor and efficiency of the

system, until now, it may be truthfully said that if the existing patent statutes were only enforced by the courts according to the spirit and the letter of the Constitution and the acts of Congress passed in pursuance thereof, our patent system would be substantially perfect. Congress has never for a moment lost sight of the fact that the primary object of such a system was, and is, to build up our manufactures by stimulating the production of new and useful inventions. That object was expressly stated in the title of the first patent act, that of April 10, 1790,—“An act to promote the progress of useful Arts,”—and the expression was repeated in the acts of 1793, 1794, 1836, 1837, 1839, 1842, 1852, 1861, 1863, 1864, 1865, 1866, as if to keep the idea constantly in the minds of the courts, lest some of them, by forgetting it, might grow indifferent or hostile to the protection of patent property. In the earlier of these acts, the mistake was made of assuming that an action at law for damages, supplemented by heavy penalties (in the act of 1790, the forfeiture to the plaintiff of all infringing articles, and in the act of 1793, the tripling of the damages) would be an efficient protection against infringement; but when experience had shown that this assumption was erroneous, Congress, by the act of February 15, 1819 (3 Stat. at L. 481), added equity jurisdiction in all patent cases, and provided for the issue of injunctions to restrain infringement. In all subsequent legislation it has manifested the same disposition to uphold and strengthen the patent system.

The reason of this friendly interest on the part of the national legislature is not difficult to understand. From the very beginning the patent system demonstrated its wonderful efficiency as a means of stimulating the production of improvements in the useful arts. Within three years from the passage of the first patent act, the invention of the cotton gin revolutionized one of the most important industries and added incalculable wealth to the country. Experience had not yet shown the necessity for injunctive relief, and, in its absence, poor

Whitney failed to receive the pecuniary reward to which he was so justly entitled, and became impoverished rather than enriched by his great invention. Other important inventions and discoveries, however, continued to be made with better results for their authors, and the system became widely popular. The public began to realize that the law had created a new industry—that of making inventions—and that it opened to every man, even the poorest, the opportunity for sudden wealth. With the amendments of 1819 and 1836, which practically perfected the law, valuable inventions and discoveries multiplied with amazing rapidity, and the country entered upon an era of industrial progress unexampled in all history. Congress, in close touch with the people, participated in the general appreciation of the patent system, witnessed with satisfaction and pride its effect upon the development of our manufactures, agriculture and commerce, and has never since failed to maintain it and to adopt any measures agreed upon by its friends for the purpose of improving and perfecting it. Even during the hostile Granger agitation of the late '70s, which unquestionably reached and effected the courts, not an unfriendly word found its way into the patent statutes.

But, notwithstanding the plain language of the Constitution and the statutes, the general popularity of the patent system, the tender interest and regard manifested towards it by Congress and the ample powers given to the federal courts for the protection of the patent property, these courts have been, for years, systematically engaged in destroying the value of such property by confiscating the most important portion, and in some instances the whole, of the term of the patent, turning it over to the use of irresponsible infringers and guarding them against financial accountability for their piracies. I do not mean that the courts have intended to do all this, *but they have done it*, whether intentionally or not, and the evil has become so great as to demand imperatively the interposition of Congress to prevent its continuation.

In tracing the origin and growth of this evil, I must review briefly the history of patent legislation, and of the judicial practice thereunder.

The history of the patent system in this country embraces two eras—the first beginning April 10, 1790, and ending with the passage of the act of July 4, 1836; the second, beginning with the act last mentioned and extending to the present day. During the first era, our system was modeled upon that of Great Britain, in which patents are granted without investigation of the prior art, upon the mere filing of a petition and specification and the payment of the prescribed fee. Such patents, of course, carry with them no *prima facie* presumption of originality and novelty of invention, and the general rule in the British courts has been, as stated by Lord Cottenham, in *Kay vs. Marshall* (2 Webst. P. C. 42), to require the plaintiff to show “at least a *prima facie* title” to relief before an injunction *pendente lite* will be granted in a contested case. Uninterrupted possession for a longer or shorter time, or the verdict of a jury sustaining the validity of the patent, is regarded as establishing such *prima facie* right for the purpose referred to, even where the chancellor himself may have grave doubts of the validity of the patent. As Lord Eldon expressed it, in *Universities vs. Richardson*, 6 Ves. 706 (A. D. 1802): “In the case of patent rights, if the party gets his patent, and puts his invention in execution, and has proceeded to a sale, that may be called possession under it, *however doubtful it may be whether the patent can be sustained*, this court has lately said possession under a color of title is ground enough to enjoin, and to continue the injunction, till it shall be proved at law that it is only color and not real title.”

In the United States, under the act of 1819, which, for the first time, conferred equity jurisdiction in patent suits, the rule immediately adopted is stated by Mr. Justice Washington, in *Isaacs vs. Cooper*, 4 Wash. C. C. 259 (A. D. 1821), as follows:

“The practice of the court of equity, upon motions of this kind, is to grant an injunction upon the filing of the bill, and

before a trial at law, if the bill state a clear right, and verify the same by affidavit. If the bill states an exclusive possession of the invention, or discovery for which the plaintiff has obtained a patent, an injunction is granted, although the court may feel doubts as to the validity of the patent."

Such was the practice in England, and such the practice in this country prior to July 4, 1836, when patents were granted without any previous investigation of the state of the art, and therefore, were not even *prima facie* valid.

But the act of 1836 radically changed the system. Under that and all subsequent patent acts, the government itself undertakes to investigate and determine the question of validity before granting the patent. At the present time, this work of preliminary investigation is performed by two hundred and sixty-two examiners and assistant examiners, all of whom, under the civil service statutes, are practically appointed for life or good behavior. Inventors are divided into classes, according to subject-matter, and each principal examiner, aided by two or three assistant examiners and a suitable clerical force, is permanently in charge of one or two of said classes, thus enabling him and his assistants to qualify themselves thoroughly as expert specialists in their respective departments. For their use, the government provides an ample library, containing copies of all American patents, all foreign patents issued in printed form, and all important technical publications, together with digests and abstracts to facilitate their labors. The examiners are men of education, experience, and usually of ability, promoted by merit from the ranks of the assistant examiners, and, therefore, thoroughly trained for the practical discharge of their duties. The scheme is theoretically perfect, and its results have been as satisfactory as can be expected from any human agency.

Now it cannot be successfully denied that the presumption of novelty and validity arising out of the grant of a patent upon such an examination by trained government experts familiar with the particular art to which the patent relates and

with the history of the evolution of that art, is immeasurably stronger than that which arises out of the mere fact that a patentee, in a given instance, has used his invention for a while without anybody's infringing it, or that a few infringers have preferred to settle rather than incur the expense and risk of a suit. Nor can it be successfully denied that a vast majority of the patents issued by the United States are good and valid. It follows that an American patent, issued since the act of July 4, 1836, is *prima facie* valid from the date of its issue; and such has been the invariable ruling of the Supreme Court in all cases except where want of novelty was plainly apparent on the face of the specification (*Mitchell vs. Tilghman*, 19 Wall. 390; *Cantrell vs. Wallick*, 117 U. S. 695; *Smith vs. Goodyear D. V. Co.*, 93 U. S. 486; *Lehnbeuter vs. Holthaus*, 105 U. S. 94). When such a patent is introduced in evidence the burden is cast upon the defendant to show that it is not good or that the patentee is not the first inventor (*Seymour vs. Osborne*, 11 Wall. 516, 538). In fact, the statute itself plainly renders the patent *prima facie* valid by requiring that the defenses of anticipation, prior public use, abandonment, etc., must be pleaded and proved before the court can consider them—and not only pleaded and proved, but the presumption of validity is so exceedingly strong as to cause the Supreme Court to hold that on such issues every reasonable doubt should be resolved against the defendant (*Coffin vs. Ogden*, 18 Wall. 120, 124; *Cantrell vs. Wallick*, *ubi supra*). There is but one higher grade of presumption, namely, that class which the law denominates “conclusive” because no proof can overcome them.

Now, we have already seen that, on motions for preliminary injunction, the British courts require evidence, either of a verdict sustaining the patent or of some degree of acquiescence, or, as they call it, “exclusive use” under it, because the patent itself, issued without any investigation of the prior art, has no *prima facie* presumption of novelty in its favor. The slightest degree of presumption in favor of the patent is held,

however, by those courts to be ample to authorize the grant of the injunction. In *Universities vs. Richardson* (*ubi supra*), Lord Eldon intimated that even a single sale by the patentee would be sufficient for the purpose, and said: "Possession under *color* of title is ground enough to enjoin," and that, under such circumstances, the injunction should issue, "however doubtful it (the validity of the patent) may be." Fifty-four years later Vice-Chancellor Stuart, in *Gardner vs. Broadbent* (2 Jur. N. S. 1041), said:

"There is no law of this court which prevents a patentee, by the recency of his patent, from applying for an injunction *ex parte*; and I wish it to be understood that the law of the court is that laid down by Lord Eldon in the case of the *Universities of Oxford and Cambridge vs. Richardson*."

In several other cases the English courts have held, in substance, that anything sufficient to indicate *prima facie* validity, or, as some of them call it, "color of title," is enough to support an *interim* injunction; and in all cases, without exception, they base the requirement of acquiescence upon the absence of any presumption in favor of the patent arising out of its grant. They established the rule arbitrarily as a sort of judicial fiction, not in a spirit of hostility to the patent, but in the interest of the patentee, to enable him to obtain the protection of preliminary injunctions. Under patents supported by no presumption of validity, the principles of equity jurisprudence would not justify the issue of such writs, and they sought an excuse for granting them. Alleged "acquiescence," or, as they call it, "exclusive use," was a flimsy excuse, but it was better than none at all, and was applicable in a great majority of cases; and so they seized upon it, weak as it was, and were thus enabled to give the patentee a measure of relief from the annoyance and injury of continued infringements.

There is no occasion for such a rule in this country, and no justification for adopting it—in fact, it is here nothing more nor less than a judicial absurdity. For, manifestly, it is simple self-stultification to hold, in one breath, that American

patents issue with a *prima facie* presumption of validity so strong that nothing but conclusive evidence can overthrow it, and, in the next breath, that they are on a par with English patents which issue with no presumption of validity whatever, and, therefore, on motions for preliminary injunction, that they must, like English patents, be fortified by some additional evidence, however weak, to give them at least an appearance of validity. In England, the effect of the rule that requires a period of exclusive use, is to establish a presumption of validity where none existed before; in the United States, its effect is to ignore an almost conclusive presumption of validity, already existing, and demand a different one of vastly inferior force—one which gives, as the English courts admit, a mere “*color* of title.” In other words, our courts proceed upon the absurd theory that, while the greater presumption is not sufficient, the vastly inferior one is amply sufficient. So long as we do not apply for preliminary injunctions, they tell us, by their words, that our patents are not only *prima facie*, but almost conclusively, valid from the day of their issue; but when we move for a preliminary injunction, they take it all back and tell us, by their acts, that these same patents have no *prima facie* value whatever. They practically convert the presumption of validity into one of *invalidity* by requiring the patentee to prove the soundness of his patent by extrinsic evidence as a condition of granting him any protection whatever against even the boldest infringer. It is unfortunate that the question cannot be taken to the Supreme Court, for it is hardly conceivable that that court could fail to appreciate and correct the inconsistency and absurdity of the present practice.

The American practice on this subject was undoubtedly copied from the English practice, and its application in this country to patents granted since 1836 is a striking illustration of one of the most serious vices of American jurisprudence, namely, the proneness of our courts to ignore fundamental principles and blindly follow supposed precedents without as-

certaining the reasons upon which they were based, and in the absence of which they have no pertinency. The habit is attributable to a disposition to avoid labor and responsibility—in other words, to laziness and lack of independence. An indolent judge is naturally inclined to postpone the investigation of facts to final hearing, and to rely upon the literal words of a convenient precedent instead of studying out fundamental principles and balancing the weight of authority. A careful examination of the English decisions on the question of preliminary injunctions in patent cases would have clearly shown that while they were applicable and reasonable under patents having no *prima facie* validity, they were not only inapplicable under patents of the United States, but, in fact, require a practice here exactly opposite to that of the English courts.

This neglect of the federal courts to give due weight, on motion for preliminary injunction, to the almost conclusive presumption of validity which inheres in American patents from the moment of their issue, has inflicted, and is inflicting, an injury to our patent system and to the owners of patent property, which it is difficult to overestimate. It results in practically denying protection during the earlier years of the patent and freely allowing infringers to enter the field in competition with the patentee and ruin his business. If infringements begin early enough there can then be no period of “exclusive possession” or “acquiescence,” and the patentee is obliged to wait until the final decree on the merits of the case, and then await the result of an appeal before he can receive any relief. Experience has shown that if the defendant be rich, and disposed to make a stubborn fight, he can delay the final hearing, and the hearing on appeal, from five to ten years, and in some cases almost or quite to the end of the term of the patent. Meanwhile, he is using the invention, and, perhaps, making a fortune out of it; and his success in pirating the patentee’s property and avoiding punishment induces other infringers to enter the field, deters capitalists from coming to the aid of the patentee and destroys the market

value of the patent. I have encountered a case, in my own practice, where my client, who had made and patented one of the most valuable inventions of modern times, was obliged to spend the entire term of his patent in wearisome and expensive litigation. Just as the patent was expiring, the courts decided that it was broadly valid; but it was then too late to be of any substantial benefit to the patentee. He had exhausted his financial resources in the long struggle; had been obliged to witness infringers making millions out of his invention, while capitalists declined to embark in his enterprise by reason of the infringements and of the want of protection; had seen even the government itself profiting from it to the extent of about ten millions of dollars, through its infringing contractors, while its courts were refusing protection; and had been, all the while, unable to put his invention into use for his own benefit, because, under the conditions existing, capitalists declined to furnish the means necessary for that purpose. To him, the Constitution and the patent statutes passed in pursuance thereof were more than a "hollow mockery"—they had actually enticed him to his ruin, by holding out the promise of protection, which the courts, for seventeen years, refused to perform. Under the practice by which that was done, every inventor who makes a valuable invention or discovery that requires a large capital to operate it, is liable to the fate of my unfortunate client; and the greater the money-making capacity of the invention, the greater the temptation to infringe, and the more stubbornly will the infringer contest, while his large profits enable him to protract the litigation almost indefinitely at the sole expense and risk of the patentee—for it is out of *his* property that all the expenses on both sides are paid. The rigid technical rules governing accountings in patent cases practically prohibit the recovery of profits or damages, and the infringer is left to enjoy his ill-gotten gains.

The time thus lost to the patentee is the most valuable portion of his term, when, usually, he is poor and needs pro-

tection to enable him to establish his business and secure a market, or to enable him to dispose of his patent for an adequate consideration. It is then that infringement is most disastrous to him; for it impairs public confidence in his rights, prevents capital from investing under them, encourages others to infringe, and, by unscrupulous and ruinous competition, destroys the possibility of deriving profits from his patents. In fact, I have known many cases where, through the inaction of the courts, the patent has been of vastly greater protection to the infringer than to the patentee.

I have said that it is difficult to overestimate the damage and injury inflicted upon the patent interests of this country by the present practice of the courts on motions for preliminary injunction. There are about 375,000 unexpired patents now in existence. To deprive them all of the right to injunction for only *one* year after their issue means an aggregate loss of 375,000 years of promised protection. But the courts do not stop at one year—they cut off, on the average, from five to ten years; and this runs the total score of loss up to millions of years. For everyone of these years, says John Marshall, in *Grant vs. Raymond*, “the public faith is pledged” to “*secure*” the exclusive right to the patentee; and yet for everyone of them the public faith is violated by the courts of the government that gives the pledge—and this, without any reason or excuse, except an arbitrary and unjust rule of practice, carelessly adopted through a misunderstanding of the meaning of the English authorities, and inconsistent with the Constitution, the statutes and the decisions of the Supreme Court.

To appreciate the gross injustice and illegality of the present practice, look at a few simple and indisputable facts: The Constitution gives Congress only one authority in the premises, namely, the authority to “*secure*” to the inventor “the exclusive right” to his invention or discovery for “limited times,” leaving it to that body to fix the limit; Congress (Rev. St. Sect. 4884) has fixed the limit at seventeen years, and has declared the right “exclusive” for that period; and (Sect.

4921) it has given the federal courts power to grant injunctions "*to prevent the violation of any right secured by patent.*" By the plain language both of the statutes and the Constitution, the right is to be *secured* to the inventor is to be *exclusive*, and is to run, not for a portion of the period limited, but for the whole of it; and the purpose of the entire provision is "to promote the progress of" the "useful arts." By the practice of the courts, however, the right is *not* secured to the inventor, is *not* exclusive, does *not* run for the period limited, and the effect is *not* to promote, but to retard, the progress of the useful arts. The courts conceding themselves to be destitute of authority to *lengthen* the term of the patent, assume the authority to *shorten* it to any extent they may please by simply refusing to enforce the right until years have elapsed after the beginning of the term. I deny their authority to do anything of the kind; but the practice is, probably, too strongly entrenched now behind American precedents to be dislodged without the aid of an act of Congress. It is seldom that we encounter in the lower courts a judge with courage enough to disregard a long line of precedents, however conclusively he may be satisfied that they are wrong in principle and bad in results.

If the patentee be a wealthy manufacturer, he ordinarily gets some protection, even under the present practice, because unscrupulous persons are deterred from infringing through the certainty of costly litigation and the knowledge that his wealth will enable him to cut prices temporarily to such an extent as to ruin them. In other words, he is protected by his wealth though not by his patent. But where the would-be infringer is a rival manufacturer of equal or greater wealth, no such deterring influence will affect him; and the knowledge that he can infringe with impunity, and can thereby inflict irreparable damage upon his competitor, strongly allures him to enter the field. The result is, that after a period of ruinous competition and fruitless litigation, the parties are substantially compelled to form a combination or "trust," by which the patentee divides his property between himself and the trespassers, and

thereafter all work together against the poorer manufacturers. The present practice is the fruitful parent of "trusts," and in every instance it works in favor of the rich and against the poor. The comparatively poor patentee has not the slightest chance in the world as against a rich infringer. It is only by forming a corporation and securing the aid of capital that he can make any money out of his invention; and the capitalists, knowing his helplessness, squeeze him nearly dry in the process. The whole thing is distinctly discouraging to the making of inventions and obstructive to the progress of the arts, and the practice which permits it should be cut up root and branch.

But it may be argued that the present practice in such cases is justified by the language of the statutes—"power to grant injunctions according to the course and principles of courts of equity . . . on such terms as the court may deem reasonable." That argument, however, is clearly unsound. Both of these qualifying clauses are derived from the act of 1819, giving equity jurisdiction in all patent cases. At that time our patents were, like English patents, destitute of any *prima facie* presumption of validity, and the "course and principles of courts of equity" demanded the practice established by Lord Eldon, in 1802, and reaffirmed by Vice-Chancellor Stuart, in 1856, namely, that the injunction should be granted if there is even a "color of title," "however doubtful it may be whether the patent can be sustained" at final hearing. There were no previous precedents in this country, and "the course and principles of courts of equity" had to be determined by resort to English authorities. But, seventeen years later, the act of 1836 supplied to American patents an almost conclusive presumption of validity, and thereafter "the course and principles of courts of equity," as defined by the English judges themselves, required the grant of an injunction wherever necessary to secure the inventor's exclusive right at any time after the date of his patent. It was no longer necessary, as in

England, to wait to establish a *prima facie* presumption of validity by *user* or verdict.

So far as concerns the power to grant "on such terms as the court may deem reasonable," this clearly confers the power to impose conditions upon the *injunction granted* but not upon the *patent*. That document is the government's solemn contract to secure to the patentee the exclusive right for seventeen years, and the courts have no power to vary its terms nor to annex to it any condition whatever. Its conditions are determined in advance by the Constitution and statutes; and for the courts to require further conditions not so determined—for example, to decree that the exclusive right shall not be protected until after it has been quietly enjoyed for several years, or has been fortified by a verdict at law or a decree in chancery, is simply judicial legislation tantamount to an amendment both of the Constitution and the statutes—a kind of legislation which, says Mr. Justice Baldwin, in *Whitney vs. Emmett* (Baldw. Rep. 316), is "of the most odious kind, necessarily retrospective, and substantially and practically *ex post facto*."

There is, therefore, neither reason nor authority for our present practice, and it seems to be in plain violation of the law. There can be no question about its enormous injury to our patent system, and its retarding, rather than promoting, "the progress of science and useful arts." As the patentee comes before the courts with an acknowledged *prima facie* right, and, therefore, with a title which is good till somebody shows a better, they should enforce the maintenance of the *status quo* and restrain the infringer from interfering with it until he shall have produced the degree of evidence required to defeat the claim of validity. On the preliminary motion, the raising of a mere doubt should not be allowed to unsettle the plaintiff's right, because it is everywhere held in this country that even at final hearing upon full proofs the validity of a patent cannot be overthrown except by evidence beyond a reasonable doubt, and it is held even in England that the plaintiff

is entitled to his injunction upon showing a *prima facie* right, notwithstanding that the judges doubt the result of a final hearing. How inconsistent and absurd is our practice of holding that a reasonable doubt overcomes the plaintiff's right at the *preliminary* hearing, while the same doubt at the *final* hearing only operates to establish his case. Reason and common sense protest against such a practice, and demand that, at the preliminary as well as the final hearing, the infringer, upon whom is the burden of proof, shall be required to make good his contention before being allowed to disturb the quiet possession of the *prima facie* owner of the title.

Of course, if the courts were to adopt the practice of enforcing the *prima facie* right from the beginning of the term, "the course and principles of equity" would require of the patentee to be prompt in filing his bill and bringing his suit to final hearing on penalty of otherwise losing his equitable right through laches, for, under such conditions, delay would be inequitably injurious to the defendant. On the other hand, the defendant would have every incentive to expedite the final hearing, and the result would be to speed the cause, prevent the piling up of enormous records and lighten the labor of the courts. The practice of allowing the defendant to profit from the invention until finally arrested by a perpetual injunction, is mainly responsible for the long delays and immense records in patent cases of which the judges vociferously complain. In fact, it offers a great premium for these very evils. The courts have brought this trouble upon themselves, and they have only to change their unreasonable rules of practice to get rid of it.

Such change of practice would do no injustice to the defendant. All the legal defences enumerated in the statute would still be open to him on final hearing, and even on the preliminary hearing, if he could then establish them beyond a reasonable doubt. On both hearings, all equitable defences growing out of the peculiar circumstances of the case, and showing that an injunction should not be awarded under such

circumstances, would also be open to him. He would have every advantage that he now possesses, except that of being able to delay judicial action and pile up enormous expenses and costs until, by the use of the patented invention, he has enriched himself and ruined the patentee.

There is another strong reason why the present practice should be abolished, and that is, that such a change will materially conduce to the relief of Congress from extension cases in the future; whereas, under the practice now prevailing, such cases are liable to be multiplied almost indefinitely, and to demand much time and labor which could be profitably employed on matters of general legislation. Patentees who are robbed of protection by the courts for a considerable portion, or, as in some cases, for the whole of the term of their respective patents, have a strong equitable claim upon the government to make good its promise of protection for a period of seventeen years. They plead, with irresistible force, that the government has practically repudiated its solemn contract and, by false pretences of future protection, has cheated them out of their inventions and out of the money paid to it for its worthless patent deed. No Congressman possessed of a fine moral sense trained in the study of law and equity can turn a deaf ear to petitions asking for such manifest justice; and the result is that much valuable time is employed in hearing and in considering them. By simply protecting the patent from the beginning of its term, all this unnecessary expenditure of congressional time and labor would be avoided. Applications for extensions might, of course, still come in occasionally in cases of extreme hardship; but they would appeal to the generosity and gratitude of the public, as in the cases of Dr. Graham's heirs (16 Fed. Rep. 543) and the Page heirs (1 Fed. Rep. 304), or seek relief from individual misfortunes or from private wrongs. Their number would be small, and they would easily be disposed of. No longer could they come in scores, imperatively demanding justice from Congress by

reason of the broken promises and bad faith of the government itself.

An immediate and potent remedy for the evils of the present practice may and should be provided. For that purpose I suggest an amendment to the statute, simply adding at the end of Section 4921 the following words:

“Injunctions to restrain infringement *pendente lite* shall not be denied on the mere ground that the patent is of recent date or has not been adjudicated, nor where the validity of the patent, or the fact of infringement is supported by a preponderance of evidence.”

Such an amendment would not interfere with any legal or equitable defence, would relieve the government from the charge of bad faith, would save Congress from wasting its time on a multitude of extension cases, and, in my judgment, would add greatly to the efficiency of our patent system as a means of promoting the progress of science and useful arts.

PRESENT STATUS OF THE LAW RELATING TO DESIGNS.

BY

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On May 9, 1902, a bill completely redrafting the design statute, Section 4929, became a law. Notwithstanding that the new section entirely rewords the provisions for the granting of design patents, it appears that it was passed without the approval of the profession and, indeed, while the Patent Law Association at Washington was getting an expression of opinion on the subject. The bill was reported as amended on April 15th; passed the Senate without debate April 19th; was referred to the House of Representatives April 21st; and was reported back to the House and passed April 26th. Examined and signed April 29th, it was approved by the President May 9th. Therefore, it appears that the entire history of the bill covers a period of only a little more than a month. As far as can be learned, no discussion of the bill whatever was had. From the report of the Patent Law Association of Washington, it appears that when this bill was before the House Committee, the chairman of the House Committee stated that he would like to hear the Patent Law Association upon the matter, and the Commissioner of Patents so informed the Association; that the Association prepared a printed circular letter for the purpose of obtaining the opinions of some four or five hundred representative patent attorneys throughout the country, but that the bill was passed without affording the Association an opportunity to receive replies or to be heard in the matter at all.

Before May 9th the section read,—

“Section 4929. Any person who, by his own industry, genius, efforts and expense has invented and produced any new

and original design for a manufacture, bust, statue, alto-relievo, or bas-relief; any new and original design for the printing of woolen, silk, cotton, or other fabrics; any new and original impression, ornament, patent (pattern), print, or picture to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture; or any new, *useful*, and original *shape or configuration of any article of manufacture*, the same not having been known or used by others before his invention or production thereof, or patented or described in any printed publication, may, upon payment of the fee prescribed, and other due proceedings had, the same as in cases of inventions or discoveries, obtain a patent therefor."

As now amended it reads,—

"Section 4929. Any person who has invented any new, original *and ornamental* design for *an article of manufacture*, not known or used by others in this country before his invention thereof, and not patented or described in any printed publication in this or any foreign country before his invention thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law and other due proceedings had, the same as in cases of inventions or discoveries covered by Section 4886, obtain a patent therefor."

To what extent then does the new section alter the pre-existing law as regards the question of patentability of different classes of designs? The present paper is restricted to this inquiry.

The power of Congress to protect designs, like its power in regard to mechanical patents, arises in Article I, Section 8, of the constitution. The first general design statute was passed in 1842; this was followed by the law of 1861. The law of 1861, in turn, was repealed by the consolidated patent act of July 8, 1870, which is substantially re-enacted in the Revised Statutes. All these acts up to the present time have

specifically recognized four classes of designs, the first three of which "plainly refer to ornament or to ornament and utility, and the last to new shapes or forms of manufactured articles." (Smith *vs.* Whitman Saddle Co., 148 U. S. 674.) Under R. S. 4929 before amendment, the three classes which "plainly refer to ornament" were as follows:

(1) "Any new and original design for a manufacture, bust, statue alto-relievo, or bas-relief;

(2) "Any new and original design for the printing of woolen, silk, cotton or other fabrics;

(3) "Any new and original impression, ornament, pattern, print, or picture to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture."

Under the amended statute these classes are included, if at all, in the one phrase:

"Any new, original and *ornamental* design for an article of manufacture."

As, however, all the articles named in the three classes "which plainly refer to ornament" are articles of manufacture, and as the term "design" is broad enough to include "impression, ornament, pattern, print or picture," it does not appear that the new section has changed the law as regards such three classes of ornamental designs, with the probable exception of pure works of the fine arts already protected by R. S. 4992.

But, on the other hand, the fourth class of designs expressed in the phrase "any new, useful and original shape or configuration of any article of manufacture" is either not protected at all under the amended section, or is included in the same phrase "new, original and *ornamental* design."

A shape or configuration may certainly be included by the word "design," and if by judicial interpretation of the former statute the term "useful" has come to be really synonymous with the newly-introduced qualification "ornamental," no real change has been made in the law. The amendment would then stand as an unnecessary and uncalled for re-enactment

of the pre-existing law in new terms which require judicial interpretation to establish the fact that nothing has been changed but the words.

If, on the other hand, the pre-existing law covered and protected a certain class of designs, the object of which is purely utility as distinguished from adornment, then the amendment entirely removes such designs from all protection.

The word "useful" in the section has received repeated attention in the decisions and has been given a meaning inconsistent with the idea of *mere* utility, but not inconsistent with the idea of utility combined with either neatness or attractiveness in appearance.

In *Rowe vs. Blodgett*, 112 Fed. Rep. 61, the Circuit Court of Appeals for the Second Circuit, in quoting and approving Judge Townsend's decision on a design for a horseshoe calk involving no attempt at ornamentation or attractiveness of appearance, said :

"Several defenses were urged, but Judge Townsend, at circuit, held as follows :

'I decide this case upon the broader ground that patents for designs are intended to apply to matters of ornament, in which the utility depends upon the pleasing effect imparted to the eye, and not upon any new function. The advantage claimed by complainant for the increased flat surface afforded by the curved line, which is the essential feature of his patent, is to enhance the mechanical utility of the calk by thus making a stouter shoulder, which would not so readily become bruised out of shape, and which, therefore, could be more easily removed with a wrench, when worn, from the shoe. It is significant, in this connection, that the patentee first applied for this essential feature of downward projecting curved lines on the sides of the base, as a mechanical invention, which application was rejected, and that he then attempted to cover the same feature by a design patent. Design patents refer to appearance, not utility. Their object is to encourage works of art and decoration which appeal to the eye, to the aesthetic

emotions, to the beautiful. A horseshoe calk is a mere bit of iron or steel, not intended for display, but for an obscure use, and adapted to be applied to the shoe of a horse for use in snow, ice, and mud. The question an examiner asks himself while investigating a device for a design patent is not 'What will it do?' but 'How does it look?' 'What new effect does it produce upon the eye?' The term 'useful,' in relation to designs, means adaptation to producing pleasant emotions. There must be 'originality and beauty. Mere mechanical skill is not sufficient.' *Northrup vs. Adams*, 2 Ban. & A. 567, Fed. Cas. No. 10,328, approved in *Smith vs. Saddle Co.*, 148 U. S. 679, 13 Sup. Ct. 768, 37 L. Ed. 606; *Ex parte Parkinson* (1871) Dec. Com. Pat. 251.'

"We prefer to rest our affirmance on concurrence with these views."

Again in *Westinghouse Electric & Manufacturing Co. vs. Triumph Electric Co.*, 97 Fed. Rep. 99, the Court of Appeals for the Sixth Circuit said:

"We should think it very doubtful whether the word 'useful,' introduced by revision of the patent laws into the statute, is to have the same meaning as it has in the section providing for patents for useful inventions. The whole purpose of Congress, as pointed out by Mr. Justice Strong, speaking for the Supreme Court, in the case of *Gorham Co. vs. White*, 14 Wall. 511, was to give encouragement to the decorative arts. It contemplated not so much utility as appearance. 'The law manifestly contemplates that giving certain new and original appearances to a manufactured article may enhance its salable value, may enlarge the demand for it, and may be a meritorious service to the public. . . . It is the appearance itself which attracts attention and calls out favor or dislike. It is the appearance itself, therefore, no matter by what agency caused, that constitutes mainly, if not entirely, the contribution to the public which the law deems worthy of recompense.' This decision was rendered at a time when the statute of 1861 was in force. By that statute a design patent was provided for

‘any new and original shape or configuration of any article of manufacture.’ The word ‘useful’ did not appear in this phrase. It did, however, appear in another part of the same section, to wit, ‘any new and useful pattern, or print, to be either worked into or worked on, or printed, or painted, or cast, or otherwise fixed on any article of manufacture.’ By the Act of 1870, which was a revision as well as amendment of the patent laws, the word ‘useful’ was transferred from the office of qualifying patterns and prints to that of qualifying shapes or configurations of matter (12 Stat. 246). We cannot infer from the transfer of a single word from one phrase to another, where both are *in pari materia*, that thereby, as to one of the classes of designs protected by the statute, the whole purpose of Congress, as pointed out by the Supreme Court, was changed. We must infer that the term ‘useful’ was inserted merely, out of abundant caution, to indicate that things which were vicious and had a tendency to corrupt, and in this sense were not useful, were not to be covered by the statute. As already said, the statute is a revision, and the presumption of the legislative intention to change the meaning by a change of language is by no means so strong as when the sole object of the statute is to amend.”

In the case of *Untermeyer vs. Freund*, 37 Fed. Rep. 342, Judge Coxe says :

“It must be beautiful. It must appeal to the eye. . . . If it proves to be pleasing, attractive and popular, if it creates a demand for the goods of its originator . . . its use will be protected. . . . The object of the law is to encourage those who have industry and genius sufficient to originate objects which give pleasure through the sense of sight.”

On the other hand and even before the change of position of the word “useful” to qualify the phrase “shape or configuration,” in *Gorham vs. White*, Judge Blatchford, at circuit, had said :

“A design for a *configuration of an article of manufacture* is embraced within the statute, as a patentable design, *as well*

as a design for an ornament to be placed on an article of manufacture.

“ *The object of the former may solely be increased utility, while the object of the latter may solely be increased gratification to a cultivated taste, addressed through the eye.*” (7 Blatch. 513.)

And on appeal of this time-honored case (which overruled only the finding of infringement) the Supreme Court said (14 Wall. 511):

“ *The appearance may be the result of peculiarity of configuration, or of ornament alone, . . . but, in whatever way produced, it is the new thing, or product, which the patent law regards.*”

Again, in the showcase decision, *Lehnbeuter vs. Holthaus*, 105 U. S. 94, the court said of the design:

“ *Whether it is more graceful or beautiful than older designs it is not for us to decide. It is sufficient if it is new and useful.*”

Can the new requirement of the amended Statute—“new, original and ornamental”—be reconcilable with this expression of the Supreme Court that “it is sufficient if it is new and useful?”

But perhaps the most authoritative case of all is the famous Saddle case, *Smith vs. Whitman Saddle Co.*, 148 U. S. 674, which distinguishes *Gorham vs. White* and approves *Lehnbeuter vs. Holthaus*. After quoting at some length from *Gorham vs. White*, the Supreme Court said:

“ *This language was used in reference to ornamentation merely, and moreover the word ‘useful,’ which is in Section 4929, was not contained in the Act of 1842, under which the patent in Gorham Co. vs. White, was granted. So that now where a new and original shape or configuration of an article of manufacture is claimed, its utility may be also an element for consideration. Lehnbeuter vs. Holthaus, 105 U. S. 94.*”

And in the same case the court clearly classifies the subjects of designs and divides them categorically into the ornamental and the useful, thus:

“ The first three of these classes *plainly refer to ornament, or to ornament and utility, and the last to new shapes or forms of manufactured articles* ; and it is under the latter clause that this patent was granted.”

It would seem then that certainly wherever the æsthetic sense is involved in a design either in respect to ornament, or in respect to the beauty that flows from the mere neatness and fitness of shapes, the statute before amendment certainly afforded protection ; whereas, now the requirement “ ornamental ” would seem incapable of so broad a meaning. There is certainly a class of designs wherein neatness or fitness of shape is evolved solely for the purpose of *improved appearance* or attractiveness, and yet where ornamentation is neither sought for nor present. This field of effort the amended statute leaves unprotected. Secondly, while it is debatable whether *merely* useful shapes where utility and not appearance is the sole object, were or were not protected under the statute, it is quite certain now that neither the saddle of the Whitman case nor the showcase of *Lehnbeuter vs. Holthaus* would be protected under the amended statute.

The amendment has not even the excuse of following *Rowe vs. Blodgett*, since literally much that appeals to the eye and pleases the æsthetic sense because of simplicity, neatness, or symmetry of appearance, is the antithesis of *ornamentation* and may probably be held not “ ornamental.” The amendment seems to stand as utterly needless if not also ill-considered and ill-timed legislation, and as was said of it in the circular prepared against the bill by the Patent Law Association of Washington :

“ Can there be any question, then, that a statute which cuts out “ a new and useful shape or configuration ” and condenses the statute to “ new, original and ornamental ” may be termed and adjudged a restriction of the present law ?

“ Can there be any question that in examining shapes or configurations a new requirement is imposed by the proposed statute ? ”

PATENT LITIGATION FROM THE EXPERT'S STANDPOINT.

BY

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The great expense of patent litigation in equity involves a denial of justice in many instances, and frequently entirely prevents suits on valid patents of minor importance which have been openly and wilfully infringed. The expense is largely attributable to the employment of experts and the manner in which their evidence is taken. In the great majority of cases, however, the expert is as necessary as the lawyer, and the problem in which all are interested is how the undoubted objections are to be overcome or reduced. The suggestion of an official expert to sit with the court as its assessor may be excellent, but the official expert can no more replace the opposing experts than can the judge the opposing lawyers. Truth is best attained as the result of a contest in which both sides are presented with zeal, candor, knowledge and ability.

The prime difficulty is one for which both counsel and experts are responsible and which it is entirely within their power to cure. The method of taking testimony before a powerless examiner, leaves counsel and witnesses free to do what they please, and this liberty is too often abused. A lawyer should ask no question which would be ruled out before a judge and jury, and, as the expert presumably does not know the law, he should be instructed by the counsel calling him to refrain from incompetent and irrelevant discussions. It seems often to be forgotten that the purpose of an expert is to give evidence, and not to swear to a brief. There is ample scope for all of the expert's skill and ingenuity within his legitimate province, which is to explain clearly the status of

the patented invention in the art to which it belongs, and to show the mechanical or technical resemblances and differences between the invention and the defendant's device or art. It is no part of the expert's business to interpret the claims of the patent, beyond explaining any technical terms, and ordinarily the less he says about them the better. Indeed, if the expert has artistically described the invention, the claims should be intelligible on a mere reading. Let the complainant's expert show, in the case of a machine, for example, that the patentee's contribution to the art is embodied in the defendant's machine, and the lawyer then has the basis on which he can interpret the claims and contend for infringement. The file history can also be well let alone by the expert. Ordinarily it is concerned solely with the legal interpretation of the patent. It suffices for the expert to be instructed by counsel what pitfalls presented by it are to be avoided. It should be the golden rule of expert testimony that nothing should be introduced which can be equally well and more competently said in the brief. If counsel requires the expert to help on the brief, let him do so after the proofs are closed. There will be at least the advantage of not disclosing one's position to the adversary until the briefs are filed. There is great temptation to make points on the record, but to what good? The record will not be read until after the hearing, and ordinarily after the briefs have been first perused.

A vice of experts is the criticism of each other on the record. This is out of place. If proper, let counsel score the opposing expert in his brief, but let his own expert confine himself to the facts, which it is his duty to marshal and clarify.

Candor, brevity and clearness the expert must have, but the greatest of these is clearness. If the judge can understand, he is on the road to conviction. A few years ago, opposing counsel for the complainant sent me his brief in the court below which bristled with headings, cataloguing the various errors of defendant's expert. After the hearing we met, and

he asked what I thought of his brief. I said, "I think you have demolished defendant's expert, but he isn't the point in controversy. What the court wants to know is whether your patent is infringed, and I do not see that your brief is at all helpful. Defendant may have an *ignoramus* for an expert, but that does not prove that he infringes your patent." My friend lost his case, and in his brief before the Appellate Court, referred but once to my testimony, and then to quote with approval a single paragraph. After the hearing, the lawyer who had retained me said, "Have you seen X's brief? It makes two-thirds of my brief useless. His brief is very dangerous. Both my colleague and I complimented him upon it."

While the expert should rigorously refrain from all discussion of legal propositions, a knowledge of the law is helpful, and even necessary to his greatest usefulness. One important outcome of the evidence of the opposing experts should be to limit the issue. If both are capable and fair, they will necessarily be in accord on many propositions, thus reducing the controversy on its technical side to its lowest terms. In order that this may be accomplished, the expert must have a sense of perspective, must appreciate and ignore what is irrelevant and incompetent, and must direct and confine himself to those matters which from the legal standpoint are necessary to the determination of the case. Unless he has himself a sufficient knowledge of the law so to guide him, he must be laboriously coached, and counsel is in trepidation until he leaves the stand.

The value of the deposition lies both in the intelligibility of what is said, and in the things which are wisely left unsaid.

One great source of padding the record, which can be readily cured, is the unnecessary repetition by one expert of what has already been said by his opponent. After complainant's expert has at the outset fairly and clearly explained the patent and the defendant's device or art, how unnecessary is the usual practice for the defendant's expert to do it all over again. If

the complainant's expert has made any mistakes, or has failed to make the matter clear, correction and elucidation by defendant's expert are proper. But for him to repeat what has already been well said is as superfluous as it is customary. So also, where defendant's expert has given a careful explanation of the prior art, it is a useless waste of time and space for complainant's expert to duplicate it. When it comes to complainant's evidence in reply, the issues which complainant intends to rely upon should be fairly well crystallized, and complainant's expert can well confine his attention to the disputed propositions.

Let anyone look over the average record, and he will see how large a percentage of space is wasted in mere duplication.

Again, I repeat that the less the experts discuss the claims, the better. The tendency is to exalt the claims to an importance which they do not deserve. Our patent system bids fair to break down under the art of claim-writing. To-day the value of a patent very frequently depends more upon the skill of the claim-writer than upon the genius of the inventor, and in many cases more time and ingenuity are expended upon drawing the claims than in producing the invention. While the drawing of claims is outside of patent litigation, the expert can at least do his share in minimizing their importance.

The expert can properly confine his reference to the claims to showing simply what portion of the invention they point out, and can leave to the lawyer the discussion of verbal hyper-criticisms and hair-splitting distinctions which now too often encumbers the record.

It can hardly be denied that the great percentage of the cross-examination of experts is fruitless and unnecessary. In all of the cases in which I have been engaged I can count on my fingers the cases in which the cross-examination of the experts has had any effect upon the decisions. It is not because a fact is admitted by the opposing expert that it has value, but because it is true, and its truth can be established just as well by the uncontradicted testimony of one's own

expert. A lawyer once complained to me that he had lost his case in both courts, because his expert had admitted certain facts. "Why," he said, "both courts quoted this admission in their opinions." In reply I said, "I do not agree with you. It was not because your expert made the admission that you lost your case, but because what he admitted was true. You lost your case because the facts were against you. The courts simply quoted your expert, because his testimony placed the facts beyond dispute."

It is a safe rule that you cannot prove your own case by the opposing expert, and it is a great waste of time, space and patience to attempt to do so, no matter how fair and reasonable he may be. He cannot always follow the line of thought which cross-examining counsel has, and even if he can be got to say everything which is desired, his cross-examination will be so long, so prolix, so tedious and so disjointed that the court will never read it. The same facts can be brought out in an orderly, logical and intelligible way by the opposing expert in a few luminous pages which the court will read and understand, and, if the statements are not contradicted or disputed, they will have the same force coming from one expert as from the other.

When counsel shall refrain from incompetent and unnecessary questions, and experts shall confine themselves to giving evidence as to facts material to the issue, the complaint against the excessive expense of patent litigation will largely cease.

SOME EVILS OF THE PRESENT SYSTEM OF
PRODUCING EVIDENCE IN EQUITY CAUSES:
IS THERE A REMEDY THEREFOR?

BY

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Under the old English Chancery practice the method of producing evidence to the court was by commission and interrogatories.

In many of the states the practice has, by statute, been limited to one, or at most two, methods of producing evidence. Thus, in New Hampshire the evidence is produced by deposition; in Maine the evidence is produced by commission and interrogatories; in Massachusetts and Wisconsin the evidence is required to be taken in the same manner as in suits at law. In the code states of New York and Indiana, where the distinction between actions at law and suits in equity has been abolished, suits which prior to the adoption of the code were of exclusively equitable jurisdiction, are triable only by the court, and the evidence is produced in the same manner as in actions at law.

In the federal courts, until as late as 1842, the common practice of producing testimony was by commission and interrogatories and by deposition *de bene esse*. At the present time, without exceptions, so far as I know, but two methods of producing testimony in equity causes are followed. First, by oral examination before the special Examiner or Master and, second, by deposition *de bene esse*. I have never known a case in which the testimony was taken by commission and interrogatories or by examination *ore tenus* before the court, except upon hearing interlocutory motions such as for the appointment of receiver, for preliminary injunction, and in citations for contempt for violation of injunctions.

“The present system of producing evidence in equity causes,” referred to in the title of this paper, relates therefore to the taking of depositions *de bene esse*, and upon examination orally before an Examiner or Master.

The officers authorized to take and certify depositions are special Examiners or Masters having no power to pass upon questions of law arising upon the taking and production of evidence, being mere recording officers with power only to take down everything that is said, whether testimony, objections, or speeches of counsel, to ask the court occasionally for instructions, to adjourn the proceedings, and to certify and return the depositions or the testimony. The record is often expanded by tedious and irrelevant examinations and voluble and often ill-tempered colloquies of counsel. A line of examination serving no purpose but to satisfy the curiosity or interest of one of the parties seeking to develop the methods and practices of the opponent's business, will be entered into and pages of irrelevant and immaterial testimony are introduced into the record. A shrewd expert, finding himself hemmed within narrow lines by a strict cross-examination, begins to quibble on definitions, evade and qualify as to terminology, evading a direct answer, and page after page of record is manufactured in an attempt to get an answer which ought not to occupy six lines, or which might be answered by a simple yes or no.

A lawyer, eminent in patent practice and the author of a treatise, finding his witness hard pressed upon cross-examination, and desiring to give him time for reflection and instruct him as to his answer, would break in with an interruption which usually began with this formula :

“Counsel for complainant is constrained to call the attention of the court,” etc., and thereupon would follow an able argument, extending through a page or two of the record, which would precisely inform the witness as to the answer he was expected to give to the question. That an extended colloquy between counsel should follow such an interruption is only

natural, but the result of such debates gives satisfaction only to the stenographer and the printer.

This abuse of the privileges of examination in the production of evidence in equity causes has so greatly added to the extent and cost of the record that it has become an oppression upon litigants, and has greatly added to the labor of courts which are compelled to hunt through a hay stack of irrelevant colloquy to find the needle of fact.

Is there a remedy for this evil?

The thirtieth section of the Act of September 24, 1789, which organized the courts of the United States, commonly called the Judiciary Act, enacted "that the mode of proof by oral testimony and the examination of witnesses in open court shall be the same in all the courts of the United States, as well in the trial of causes in equity, and of admiralty and maritime jurisdiction, as of actions at common law." A section in the Act of April 29, 1802 (Sec. 25, 2 Stat. 166), provides, "that in all suits in equity it shall be in the discretion of the court to order the testimony of witnesses to be taken by deposition," with certain provisos. Notwithstanding this first act, it was never the practice in equity cases to take testimony *ore tenus*, nor, except when proceeding under the Act of 1802, authorizing the taking of depositions, otherwise than according to the rules and practice of the Court of Chancery in England, where, as is known, the testimony was taken by the commissioner on interrogatories and cross-interrogatories, previously filed, without the presence of the parties or their counsel, and where the testimony when taken was sealed up until an order was obtained for publication, after which no more testimony could be taken.

In 1803 (2 Stat. at L. 244, Sec. 2) an appeal to the Supreme Court was given in equity cases, and it was provided that upon the appeal a transcript of the bill, answer, depositions and all other proceedings in the cause should be transmitted to the Supreme Court. The case was to be heard in the Supreme Court upon the proofs submitted below.

In *Conn vs. Penn*, 5 Wheat. 424, decided in 1820, it was held that a decree founded in part upon parol testimony must be reversed because that portion of the testimony which was oral had not been sent up. For this reason, among others, the cause was sent back for further proceedings according to equity. Chief Justice Marshall, in delivering the opinion of the court, said :

“ Previous to this Act [that of 1803] the facts were brought before this court by the statement of the judge. The depositions are substituted for that statement; and it would seem, since this court must judge of the fact, as well as the law, that all the testimony which was before the Circuit Court ought to be laid before this court. Yet the section [of the Act of 1789] which directs that witnesses shall be examined in open court, is not, in terms, repealed. The court has felt considerable doubts on this subject, but thinks it the safe course to require that all the testimony on which the judge founds his opinion, should, in cases within the jurisdiction of this court, appear in the record.”

Under the authority of the Act of May 8, 1792, the Supreme Court, at its February term, 1822, adopted certain rules of practice for the courts of equity of the United States. Rules 25, 26 and 28 related to the taking of testimony by depositions, and the examination of witnesses before a master or examiner; but by rule 28 it was expressly provided that nothing therein contained should “ prevent the examination of witnesses *viva voce* when produced in open court.” These rules continued in force until the January term, 1842, when they were superseded by others then promulgated, of which 67, 68, 69 and 78 related to the mode of taking testimony, but made no reference to the examination of witnesses in open court further than to provide at the end of rule 78 that nothing therein contained should “ prevent the examination of witnesses *viva voce* when produced in open court, if the court shall in its discretion deem it advisable.”

Afterwards, in August, 1842, Congress regulated the mode of taking and obtaining evidence in equity cases, 5 Stat. at L.

518, Sec. 6. While these rules remained in force substantially as originally adopted, and before any direct action of the court under the special authority of this last Act of Congress, the case of *Sickles vs. Gloucester Co.*, 3 Wall. Jr. 186, came before Mr. Justice Grier, at circuit, in 1856.

A rule for a commission to take testimony had been taken by the defendant. Counsel for the complainant filed the complainant's affidavit that if the evidence in the case were taken before the commissioner upon interrogatories and cross-interrogatories, it would operate unjustly and prejudicially to his interest, and obtained a special order that he might have power to cross-examine the witnesses *ore tenus*, and "that the testimony so taken shall have the same effect as if taken under the 67th rule." The defendant having protested before the commissioner against such a mode of taking testimony and having declined to cross-examine, now moved that the depositions should be suppressed and that the examination of all the witnesses should be had privately before the Master. In ruling upon this motion Mr. Justice Grier said :

"And yet, while it is true that as a general rule of courts of chancery, all witnesses will be examined on interrogatories, either by the regular examiner of the court or through the medium of commissioners specially appointed, it has never been decided that a chancellor had no power to order otherwise in a particular case, where he might consider it necessary to a proper investigation of the facts. No court is so enslaved by its general rules as to be powerless, when justice requires an exception to their operation. Accordingly, numerous cases of exceptions may be found in the books of Practice. Daniell, Eq. Prac. 1048. The practice also of sending issues of fact to a court of law to be tried by a jury and according to the principles of the common law, may be truly said to be an exception to this ecclesiastical rule of trying facts by secret inquisition, and an admission of its incompetency for a proper investigation of the truth."

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“ The Act of 1789, constituting the courts of the United States, declares ‘ that the mode of proof by oral testimony and examination of witnesses, shall be the same in all the courts of the United States, as well in the trial of causes in equity and of admiralty and maritime jurisdiction, as of actions at common law.’

“ Whatever, therefore, may be the force and binding effect of this fundamental principle as to the peculiar ‘ mode of proof,’ in the English courts of chancery, it is clearly repudiated and abolished as a rule of practice in the courts of equity of the United States.

“ It is not a fair construction of the sixty-seventh rule of court, which imputes to it an intention of repealing or overruling an act of Congress admitted to be within the scope of its constitutional power.

“ It being found inconvenient and dilatory in practice, and seldom necessary to a proper investigation of causes, to have witnesses examined *ore tenus* in open court, in chancery cases, the sixty-seventh rule merely provides, that ‘ after the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term.’

“ When witnesses live at a distance, the parties are compelled to resort to this rule in order to obtain their testimony; and in most cases, when the witnesses might be brought into court, this practice is pursued as most convenient. Judges have been rather disposed to discountenance the production of witnesses in court, on account of the delay consequent on an *ore tenus* examination. Besides, counsel, who are more apt to look to books of chancery practice than to their own statute books, have either not been aware of the rights of their clients, or not thought it a matter of sufficient importance to urge them. Hence it is, that the old practice has been generally pursued, and perhaps enforced, without much inquiry.

“ The Act of 1789 is a fundamental statute; and we have, therefore, as a fundamental principle in the administration of equity in the courts of the United States, that the mode of

proof by oral testimony, and examination of witnesses in courts of equity, shall 'be the same as in actions at law.' Either party has a right, therefore, to cross-examine witnesses *ore tenus*, and when not examined in open court, to have notice of the time and place of taking the testimony, so that he may see the witness face to face, and thus examine or cross-examine him. In many cases, as has been shown by experience, it is absolutely necessary that the party be allowed this privilege, in order to elicit the whole truth, and save himself from a garbled statement of it, which may be as injurious as direct perjury. This may be said to be the general rule, and any deviation from it is the exception. The party who claims his right is not asking a favor of the court, or making a demand which the chancellor, in his discretion, may deny; but is demanding a right guaranteed to him by the law of the land; not one held at the discretion of a judge, nor to be abolished by custom or rule of court. The secret examination of witnesses within reach of the process of the court is contrary to the policy of the law; either party may object to it at his discretion, and the court are bound to allow it. A court may dispense with their own rules in a special case, but cannot deny to a party a right guaranteed to him by statute, or the law of the land.

"The circuit courts of the United States have original jurisdiction in patent cases, and do not exercise their authority merely as auxiliary to a court of law, and for a more effectual remedy. Hence we do not feel bound in all cases to send a party to establish his right in a court of law, before granting a final injunction. In many questions of originality and infringement of patents, the concurrent opinion of twelve men, with little knowledge of the principles of science and philosophy which affect the case, may give but little satisfaction to the conscience of a chancellor. Hence it is becoming more common to examine these questions in courts of equity, without the aid of a jury, unless where the issue depends rather on the credibility of witnesses, than the value of their opinions as experts or philosophers. But such cases cannot be properly

brought before the court by secret examination of the witnesses. It is almost impossible to frame interrogatories in chief so as completely to elicit the truth, where the witness has to refer to complex models or drafts. The whole truth can seldom be obtained, or falsehood detected, unless by a sharp cross-examination *ore tenus*, by skilful counsel. It is sometimes the case also, and in fact, too often, that the party, or his counsel, prepare the answers for their witnesses after consultation, so that the witness comes before the examiner and reads off his answers to the several interrogatories as prepared for him by the party who produces him. That such things are sometimes done, we know; but how often, we cannot know. And however ready a court may be to suppress testimony thus made up, the fact must be known to the opposite party before he can make proof of it; and this secret mode of taking testimony, gives no opportunity for its discovery.

“As a question of mere policy and the proper administration of justice, we believe that the truth of a case can be better eviscerated, by an *ore tenus* examination of the witnesses by counsel, than by the secret method of inquisition borrowed from ‘holy church.’

“We are of opinion, therefore—

“1. That this portion of the peculiar policy of courts of equity has in the courts of the United States been rejected by statute, and that it never has been a fundamental principle in their administration of equity.

“2. That the sixty-seventh rule of the series of rules promulgated by the Supreme Court, in 1842, does not affect to annul the Act of Congress, or the policy established by it.

“3. That a party has therefore a right to demand an examination of witnesses within the jurisdiction of the court, *ore tenus*, according to the principles of the common law, either by having them produced in court, or by having leave to cross-examine them face to face before the examiner.

“4. That the court had not only power to make the rule or order complained of in this case, but was bound to allow it, not

only as requisite to a proper development of the facts necessary to its just decision, but also as a right of the party guaranteed by law."

At the December term, 1861, of the Supreme Court, rule sixty-seven was amended so as to provide for the oral examination of witnesses before an examiner.

The Act of 1789, in relation to the oral examination of witnesses in open court, was not expressly repealed until the adoption of the revised statutes in 1873, Section 826 of which is as follows:

"The mode of proof in causes of equity, admiralty and maritime jurisdiction shall be according to the rules now or hereafter prescribed by the Supreme Court, except as herein specially provided."

In 1875 the case of *Blease vs. Garlington*, 92 U. S. 1, came before the court. This was a suit for the foreclosure of a mortgage. Upon the hearing in the court below, after the plaintiff had submitted his case upon the pleadings and his mortgage, the defendant presented himself as a witness to be examined orally in open court. The court refused to receive the testimony, and he filed a written proposal to testify to a statement of facts. His proposition was made part of the record. The question was whether the court erred in refusing the testimony, in which case the Supreme Court would be compelled to affirm the decree because of lack of proof, or send the case back for a new hearing. The court, by Mr. Chief Justice Waite, said:

"Since the amendment of Rule 67, in 1861, there could never have been any difficulty in bringing a case here upon appeal, so as to save all exceptions as to the form or substance of the testimony, and still leave us in a condition to proceed to a final determination of the cause, whatever might be our rulings upon the exceptions. The examiner before whom the witnesses are orally examined is required to note exceptions; but he cannot decide upon their validity. He must take down all the examination in writing, and send it to the court with

the objections noted. So, too, when depositions are taken according to the Acts of Congress or otherwise, under the rules, exceptions to the testimony may be noted by the officer taking the deposition, but he is not permitted to decide upon them; and when the testimony as reduced to writing by the examiner, or the deposition, is filed in court, further exceptions may be there taken. Thus both the exceptions and the testimony objected to are all before the court below, and come here upon the appeal as part of the record and proceedings there. If we reverse the ruling of that court upon the exceptions, we may still proceed to the hearing, because we have in our possession and can consider the rejected testimony. But, under the practice adopted in this case, if the exceptions sustained below are overruled here, we must remand the cause in order that the proof may be taken. That was done in *Conn vs. Penn* (5 Wheat. 424), which was decided before the promulgation of the rules. One of the objects of the rule, in its present form, was to prevent the necessity for any such practice.

“ While, therefore, we do not say that, even since the Revised Statutes, the circuit courts may not in their discretion, under the operation of the rules, permit the examination of witnesses orally in open court upon the hearing of cases in equity, we do say that now they are not by law required to do so; and that, if such practice is adopted in any case, the testimony presented in that form must be taken down or its substance stated in writing, and made part of the record, or it will be entirely disregarded here on an appeal. So, too, if testimony is objected to and ruled out, it must still be sent here with the record, subject to the objection, or the ruling will not be considered by us. A case will not be sent back to have the rejected testimony taken, even though we might, on examination, be of the opinion that the objection to it ought not to have been sustained. Ample provision having been made by the rules for taking the testimony and saving exceptions, parties, if they prefer to adopt some other mode of presenting

their case, must be careful to see that it conforms in other respects to the established practice of the court."

In 1893 an amendment to rule sixty-seven was promulgated providing that the court may, at its discretion, permit the whole or any specific part of the evidence to be adduced orally in open court on the final hearing. I am not aware of any case in which evidence in an equity case has been produced by oral examination in open court on the final hearing.

Chief Justice Waite seemed to regard such practice with disfavor for the reason that the testimony adduced orally at the hearing must be taken down and if testimony is objected to and ruled out it must still be sent to the Supreme Court with the record, subject to the objection, or the ruling could not be considered. But that can hardly be considered a serious obstacle to oral hearings before the court, because in all common law actions all the evidence given in the cause must be made part of the record, the evidence objected to and ruled out, as well as that which is admitted. On the other hand, Mr. Justice Grier, in his opinion quoted above, seems strongly to favor oral hearings, especially in patent causes, as conducive to the ends of justice.

While I am of the opinion that oral hearings before the court in equity cases would, to a certain extent, remedy the evils here under consideration, I do not believe that they would entirely eliminate the grounds of complaint.

I have in mind the trial of a common law action, tried by court and jury, which occupied eight weeks. Days were consumed in argument upon the admissibility of evidence. Hundreds of pages of record were occupied by the statement of objections and argument thereon. The jury having disagreed, upon a re-trial the same cause was tried in four weeks and the evidence compressed into a record many hundred pages less than occupied by the former trial.

I observe in a large majority of trial courts too great a toleration of argument by counsel upon objections to evidence. This implies, upon the part of the court, a distrust of its own

learning and ability. It sometimes indicates also a lack of preparation on the part of counsel. This toleration of long and tedious arguments on objections to evidence and indulgence of immaterial and tangential lines of examination does not apply so largely to federal judges, though federal courts are not entirely free from criticism on this point.

The production of the evidence orally before the courts in patent causes would, in most instances, I believe, tend to check the abuse of the record.

There is, however, another objection to oral hearings in patent causes. In a majority of the cases the witnesses are widely scattered, and it is much less expensive to take depositions *de bene esse* than to attempt to bring such witnesses into court at the final hearing. Again counsel for complainants, in many places, desire to examine their experts in chief in their own offices, and the testimony in chief of the expert is really an elaborate argument for complainant in the form of question and answer. The answers are drafted with great care after consultation between the counsel and the expert. This seems to be an ancient practice for it is something like this which is referred to by Justice Grier when he remarks that :

“ It is sometimes the case also, and in fact too often, that the party or his counsel prepare the answers for their witnesses after consultation, so that the witness comes before the examiner and reads off his answers to the several interrogatories as prepared for him by the party who produces him.”

Altogether it does not appear to me that there are many patent causes where the entire record could be made up on an oral hearing before the court. As the law now stands such hearings are discretionary with the court. I am not familiar with the dispositions of the courts of the eastern circuits, but in view of the crowded dockets in the middle circuits I should think that it would be very difficult to obtain an order for the production of testimony orally before the court at final hearing in an equity cause.

Under the English Chancery practice testimony was heard *ore tenus* before the Vice-Chancellor, who had power to pass upon objections to the evidence, to decide questions of law and render a decision in the cause, which on appeal to the court was heard *de novo*. Were it possible to secure the appointment of additional courts for the purpose of trying patent causes, with the powers of Vice-Chancellors, I should find a serious objection in the fact that it would add one more hearing in such causes, which are usually, under our present system, so delayed that the ends of justice are often thwarted before there is an end to the cause.

A remedy for the abuse of the record is provided in the power of the court upon motion to expunge immaterial matter from the record, and mulct the responsible party for the costs. This remedy has seldom been applied, and will probably be resorted to only in extreme cases.

In one of his always admirable addresses, read before this Section in 1895, Judge Robert S. Taylor, touching this subject, said :

“I doubt whether the rules of evidence are as grossly disregarded anywhere else as in the taking of proofs in patent causes. The length and irrelevance of cross-examinations frequently—I might almost say, commonly indulged in, is a burden to courts and parties, and a discredit to the profession. When we count the fees of counsel and witnesses, the services of the master and stenographer or typewriter, the printing, sometimes done twice, and the time and labor expended by counsel and court in threshing out the wheat from the straw on the final hearing, it warrants the statement that a day spent in needless cross-examination is not merely a day wasted ; it is a day viciously and injuriously spent, a wrong to everybody concerned, an impediment to the administration of justice, a discouragement to meritorious inventors and patentees, and in the line of the interest of that worst class of infringers—those who appropriate the inventions of others with high hand, de-

pending for immunity on the cost, uncertainty and delay of litigation.

“It must be recognized that the subject is difficult to deal with. The vice is one to which we are all tempted; sometimes by our incapacity, sometimes by our laziness. To lay the whole case bare by a few skilful questions, marks a master, and as only a few of us are masters, we are prone to make up in number what our questions lack in point. But if we cannot all be masters we need not be slovens. We need not go to the examination room with a few half baked ideas about the case and trust to luck or inspiration for the balance. To study the case thoroughly beforehand, to know just what you want to do before you begin and to have a definite purpose in every question asked, is the way to examine a witness in a patent case with effect and reasonable brevity. And this takes *work*. And that is one of the obstacles in the way of reform. Another is the difficulty of presenting the question and getting action on it by the court. If you interrupt an examination by a motion based on the irrelevance or incompetence of testimony, the judge will tell you that he can't decide the question without having the whole case before him, that you can submit your motion and he will decide it at the hearing, which he rarely does. If you wait until the record is closed the mischief is done. You can't make your objection without emphasizing the evidence to which you are objecting, and you don't want to do that in the face of the hearing. If you wait until after the hearing, the judge will tell you that you should have presented the question sooner. More than that, by the time the record is closed and the briefs written and the case argued, you are so sick of the whole business that you would rather take a dose of ipecac than drag through it again in a motion to tax costs. And so you let it go, vowing that you never will again, and half justifying yourself by the reflection that if all goes well the other fellow's client will have to pay it anyway.

“I know of no way of reaching this evil, which I believe to be a real and serious one, except by rules of court which shall forbid not only the irrelevant, immaterial and incompetent matters now excluded by the rules of evidence, but also mere unreasonable length of examination where it consists of needless repetitions, refinements or details, with the right to such allowance in costs as shall justify the labor of making the objections and presenting them to the court.”

To sum up: The remedies for the abuse of the privilege of examination are—

1. Oral examination in open court so far as the courts will permit and the circumstances of cases make them practicable.
2. Motions to expunge irrelevant testimony and tax the costs to the offending party, with liberal allowance of fees for presenting such motions.

IS THE ENTIRE JURISDICTION OF CIRCUIT
COURTS OF THE UNITED STATES, IN THE
MATTER OF SUITS BROUGHT FOR INFRINGE-
MENT OF PATENTS, DEFINED BY THE ACT
OF MARCH 3, 1897?

BY

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On the 22d day of November, 1900, judge Alfred C. Coxe, sitting as judge of the United States Circuit Court for the Southern District of New York, in the case of *Bowers et al. vs. Atlantic, Gulf and Pacific Company et al.* (104 Fed. 887), decided that the Circuit Courts of the United States have jurisdiction of those infringement suits *only* that are brought (1) in the district of which the defendant is an inhabitant, or (2) in the district of which the defendant is not an inhabitant, but in which he has a regular and established place of business and has committed an act of infringement.

The material facts of the case were these :

The complainants, who were citizens of California and of Illinois, respectively, filed their bill in equity, in the usual form, charging the defendant, a West Virginia corporation, with infringement of the complainants' patents for improvements in dredging machines.

The defendant corporation filed a plea denying the jurisdiction of the court. This plea was set down for argument, the facts admitted being as follows :

(1) That the defendant was a West Virginia corporation and an inhabitant of that state.

(2) That the corporation had a regular and established place of business in the Southern District of New York.

(3) That the corporation had never committed an act of infringement in the Southern District of New York.

(4) That the infringement complained of occurred at Savannah, in the state of Georgia.

(5) That the suit was commenced July 10, 1900.

In stating the point for decision judge Coxe said :

“As to the corporation, then, the question is whether or not the suit can be maintained upon the sole ground that the defendant has a place of business in the City of New York, or is found there. In other words, can a West Virginia corporation be sued in the Southern District of New York for an infringement committed in Georgia? ”

After an elaborate and able discussion of the subject, the learned judge answered the question in the negative and allowed the plea.

While the learned judge's conclusion may have been right, I have never been wholly satisfied that it was so, and I will give the reasons for my doubt.

I.

By Section 629 of the Revised Statutes of the United States, approved June 22, 1874, the Circuit Courts of the United States are given original jurisdiction “of all suits at law or in equity arising under the patent or copyright laws of the United States,” and by Section 711, their jurisdiction is made exclusive of the courts of the several states. This includes, of course, suits for infringements of patents, for they, clearly, are suits arising under the patent laws.

The statutory jurisdiction thus conferred is essentially jurisdiction of *subject-matter*, not of persons.

When the Revised Statutes were passed, the original Judiciary Act of 1789 (1 Stat. at L. p. 73-79) was still in force.

Section 11 of that Act provided, among other things, that “no civil suit shall be brought before either of said courts against an inhabitant of the United States, by any original process, in any other district than that whereof he is an in-

habitant, or in which he shall be found at the time of serving the writ."

In the Revision the wording of the old Act was very slightly changed so as to read :

"Section 739 . . . no civil suit shall be brought before either of said courts against *an inhabitant of the United States* by any original process, in any other district than that of which he is an inhabitant or in which he is found at the time of serving the writ."

By the Judiciary Act of March 3, 1875 (18 Stat. at L., pp. 470, 473), the phrasing of the provision was further changed so as to read as follows, the quotation being taken from the *first section* of that Act :

" . . . And no civil suit shall be brought before either of said courts *against any person* by any original process of proceeding in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving such process or commencing such proceeding . . . "

The effect of the provision, as finally embodied in the Act of 1875, was not to disturb at all the exclusive jurisdiction of the Circuit Courts of the *subject-matter* of all suits arising under the patent or copyright laws,—including, of course, suits for infringements of patents,—but was simply to prescribe two ways in which jurisdiction might be obtained of the *person* of a defendant, namely, by serving him with process (1) in the district of his inhabitancy ; or (2) in the district in which he should be found at the time of serving the writ.

At any time, therefore, after the passage of the Revised Statutes,—when, as we have seen, the Circuit Courts acquired, by express statute, exclusive jurisdiction of the subject-matter of suits for the infringement of patents,—down to the passage of the Judiciary Act of March 3, 1887, as corrected by the Act of August 18, 1888 (25 Stat. at L., p. 433), a suit might indubitably have been brought against any infringer of a patent in the circuit court for any district in which personal service of process might be made upon him, whether such dis-

district were the district of his inhabitancy, or simply the district in which he should be found at the time of serving him.

This being so, how did the Act of 1887-8 affect the situation? That Act, beyond any question, completely wiped out of existence the first section of the Act of March 3, 1875, relating to the *place* of bringing suit or the modes of obtaining jurisdiction of a defendant's person, for its enacting clause reads :

“ Be it enacted, etc., that the *first section* of the Act entitled “ An Act to determine the jurisdiction of Circuit Courts of the United States and to regulate the removal of causes from state courts, and for other purposes,” approved March third, eighteen hundred and seventy-five, be, and the same is hereby amended so as to read as follows.”

Then comes the substitute provision, viz.:

“ That the Circuit Court of the United States shall have original cognizance, *concurrent with the courts of the several states*, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution or laws of the United States, etc., etc.
 But no person shall be arrested in one district for trial in another in any civil action before a circuit or district court; and no civil suit shall be brought before either of said courts against any person by any original process or proceeding *in any other district than that whereof he is an inhabitant*, ”

This substitute for the first section of the Act of 1875 was at first thought to be applicable to patent infringement suits, and many circuit courts so decided, but it was finally determined by the Supreme Court of the United States, in the Hohorst case (150 U. S. 653), to be inapplicable to such suits.

Mr. Justice Gray, in delivering the opinion of the court in that case, said :

“ Moreover, the present suit is for an infringement of a patent for an invention, the jurisdiction of the national courts

over which depends upon the subject-matter, and not upon the parties; and, by statutes in force at the time of the passage of the Acts of 1887 and 1888, the courts of the nation had original jurisdiction "exclusive of the courts of the several states," "of all cases arising under the patent-right or copyright laws of the United States," without regard to the amount or value in dispute. Rev. Stat. § 629, cl. 9; Id. § 711, cl. 5. The section now in question, at the outset, speaks only of so much of the civil jurisdiction of the circuit courts of the United States, as is "concurrent with the courts of the several states," and as concerns cases in which the matter in dispute exceeds \$2000 in amount or value. The grant to the circuit courts of the United States, in this section, of jurisdiction over a class of cases described generally as "arising under the Constitution and laws of the United States," does not affect the jurisdiction granted by earlier statutes to any court of the United States over specified cases of that class. If the clause of this section defining the district in which suit shall be brought is applicable to patent cases, the clause limiting the jurisdiction to matters of a certain amount or value must be held to be equally applicable, with the result that no court of the country, national or state, would have jurisdiction of patent suits involving a less amount or value. It is impossible to adopt a construction which necessarily leads to such a result. *U. S. vs. Mooney*, 116 U. S. 104, 6 Sup. Ct. 304; *Miller-Magee Co. vs. Carpenter*, 34 Fed. 433."

Further, in the same opinion, he said:

"Upon deliberate advisement, and for the reasons above stated, we are of opinion that the provision of the existing statute, which prohibits suit to be brought against any person 'in any other district than that whereof he is an inhabitant,' is inapplicable to an alien or a foreign corporation sued here, and especially in a suit for the infringement of a patent right; and that, consequently, such a person or corporation may be sued by a citizen of a state of the Union in any district in which valid service can be made upon the defendant. *In re Louisville Underwriters*, 134 U. S. 488."

The ruling in the Hohorst case was explained in the later case of *In re Keasbey & Mattison Co.* (160 U. S. 221) by Mr. Justice Gray, the writer of the opinion in the Hohorst case, as follows :

“ In the case of Hohorst, *Petitioner*, 150 U. S. 653, on which the petitioner in this case principally relied, the decision was that the provision of the Act of 1888, forbidding suits to be brought in any other district than that of which the defendant is an inhabitant, had no application to an alien or a foreign corporation sued here, and especially in a suit for infringement of a patent right ; and therefore such a firm or corporation might be so sued by a citizen of a state of the Union in any district in which valid service could be made on the defendant. That case is distinguishable from the one now before the court in two essential particulars : First, it was a suit against a foreign corporation, which, like an alien, is not a citizen or an inhabitant of any district within the United States ; and was therefore not within the scope or intent of the provision requiring suit to be brought in the district of which the defendant is an inhabitant. See *Galveston, etc., Railway vs. Gonzales*, 151 U. S. 496, 14 Sup. Ct. 401. Second, it was a suit for infringement of a patent right, exclusive jurisdiction of which had been granted to the circuit courts of the United States by Section 629, cl. 9, and Section 711, cl. 5, of the Revised Statutes, re-enacting earlier acts of Congress ; and was therefore not affected by general provisions regulating the jurisdiction of the courts of the United States, concurrent with that of the several states.”

The circuit courts immediately fell into line with these pronouncements of the Supreme Court and held, that to maintain a suit for infringement of a patent in any given district, it was only necessary to get personal service on the defendant in that district irrespective of his inhabitancy there, or of his having committed acts of infringement there. (See cases cited at p. 890 in *Bowers vs. Atlantic, G. & P. Co.*, 104 Fed. 890.)

After the Supreme Court's interpretation of the Act of 1887-8, the situation was then as follows :

1. The statutory jurisdiction of the circuit courts *as to the subject-matter of all* suits arising under the patent and copy-right laws remained absolutely undisturbed.

2. The law as to the place of bringing suit, or, in other words, as to the manner of getting jurisdiction of the person of a defendant infringer, remained, practically, unchanged and the same as it was under and prior to the Judiciary Act of March 3, 1875, with this difference, however, that whereas before the passage of the Act of 1887-8, the jurisdiction of the person of the defendant infringer was regulated by statute, namely, by the first section of the Act of 1875, after the passage of the Act of 1887-8, such jurisdiction was regulated by the common law alone, the Act of 1887-8 having, as we have seen, displaced entirely the first section of the Act of 1875, *leaving no statute at all applicable to the subject.*

In this situation the Act of March 3, 1897, was passed. That Act, in full, reads as follows :

“ An Act defining the jurisdiction of the United States circuit courts in cases brought for the infringement of letters patent.

“ Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that in suits brought for the infringement of letters patent, the circuit courts of the United States shall have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership or corporation, shall have committed acts of infringement and have a regular and established place of business. If such suit is brought in a district of which the defendant is not an inhabitant, but in which such defendant has a regular and established place of business, service of process, summons or subpoena upon the defendant may be made by service upon the agent or agents engaged in conducting such business in the district in which suit is brought.”

Now, it seems to me that this Act affects only the circuit courts' jurisdiction of the *person* of the defendant infringer in the certain specified cases, and that it is to be read in connection with Sections 629 and 711 of the Revised Statutes, giving the circuit court exclusive jurisdiction of the *subject-matter* of all suits arising under the patent or copyright laws, and not as a substitute for nor as an amendment of said sections.

One of the fundamental canons of construction of statutes is that a later statute will not operate as a repeal of an earlier one, unless the later statute contains express words of repeal, or there is a plain repugnancy between the two.

Another is, that two statutes *in pari materia* are to be read together so that both may subsist, if possible.

Applying these canons to the Act of March 3, 1897, we find :

First, that the Act contains no words of repeal of any former Act.

Secondly, that it contains no provision repugnant to any provision of any pre-existing Act.

Section 629, Revised Statutes, gave the circuit courts jurisdiction of the subject-matter of *all* suits at law or in equity arising under the patent or copyright laws. The Act of 1897 takes away none of this jurisdiction.

Section 629 says nothing about the district in which suit may be brought, or the manner or mode in which the service of process may be effected, while the Act of 1897 relates wholly to such matters. The two statutes, therefore, cover different ground, the one, jurisdiction of subject-matter, the other, jurisdiction of the person of the defendant. There is no repugnancy between them, and both, therefore, may subsist.

II.

Another fundamental canon of construction is that a statute in derogation of the common law, or of common right, is to be strictly construed.

The Act of 1897 expressly provides that suit may be brought in the district of which the defendant is an inhabitant, presumably by the service of process upon him, personally, there, according to common practice, although nothing is said about the mode of service in such a case.

The Act is silent as to the bringing of suit in the district in which the infringer may be found and the making of personal service on him there. This, however, was the old, time-honored, general and usual mode of acquiring jurisdiction of a defendant's person that obtained at common law, that was anciently adopted by the courts of chancery and that was sanctioned by the original Judiciary Act of 1789 and by subsequent Federal statutes down to the repeal of the first section of the Act of 1875 by the Act of 1887-8. Moreover, it was, as the Supreme Court held in the *Hoborst* case, the mode, and the only lawful mode, available of obtaining valid service on the defendant in a patent infringement suit during the ten years that followed the repeal of the Act of 1875 by the Act of 1887-8.

Is it not then to be regarded as an established common-law mode of service, or, at least, as a mode of service enforceable as a matter of common right, irrespective of any statute? If it is, it is a kind of service that can only be taken away by a statute which expressly or by necessary implication effects that result.

Is the Act of 1897 such a statute? It certainly does not expressly prohibit this ancient, established mode of obtaining service; that is plain.

Does it do so by necessary implication? A true test is to be found in the answer to the question: May the modes of obtaining jurisdiction of the defendant's person allowed by the new statute and the old, established mode of obtaining such jurisdiction in vogue, irrespective of any statute, at the date of the new statute, coexist, without repugnancy? If they may, then the old practice was not repealed by the new statute, by implication, but remains undisturbed; if they may not, then

the old practice was repealed and the courts lost some of their ancient jurisdiction over defendants.

Jurisdiction once established is not easily lost.

"There is a presumption against an intention on the part of the legislature to oust courts of their jurisdiction, and any construction leading to such a result is to be avoided if possible." (23 Am. & Eng. Ency. of Law 353.)

The Act of 1897 provides, in terms, for service upon a defendant in the district of his inhabitancy; but this was but declaratory of the common law on the subject, such a service being competent before and irrespective of the statute. It says nothing about a service upon the defendant in the district in which he may be found, but it would have been equally declaratory of the existing common law on the subject if it had done so, the Supreme Court, in the Hohorst case, having already decided that kind of service to be allowable, without any applicable statutory provision whatsoever.

If the provision as to service on the defendant in the district of his inhabitancy was intended to be exclusive of service in any other district, Congress would, presumably, have so declared. In the Act of 1887-8 the language was apt and thoroughly exclusive: "No civil suit shall be brought . . . in any other district than that whereof he is an *inhabitant*." Had the Act of 1897 said that the circuit courts should have jurisdiction *only* in the district of which the defendant is an inhabitant,—the case would be very different.

But, aside from its declaratory features, the Act of 1897 provides a brand new mode of making service on a defendant who is neither a resident of nor to be found, for the purposes of personal service, in the district in which he commits an act of infringement, namely, by making service on the infringer's agent engaged in conducting, for the infringer, a regular and established place of business within said district. This new mode of making service on an *absent* defendant was unknown to the common law, or to the practice under the Judiciary Act of 1789, or under the Act of 1875. It is the creation of the

Act of 1897 and is, it seems to me, the only change in the law or in the practice accomplished by the Act.

This renders applicable another canon of statutory construction, namely :

“ A statute instituting a new remedy for an existing right does not take away a pre-existing remedy without express words or necessary implication ; the new remedy is cumulative and either may be pursued.” (23 Am. & Eng. Ency. of Law, 398.)

Judge Coxe discovers in the Act of 1897 an effort to *limit* the jurisdiction of the circuit courts in suits for the infringement of patents, but, after a most careful consideration of his conclusion and of the reasoning put forth to support it, I can only see in the Act of 1897 a *broadening* of the jurisdiction of such courts in respect to the jurisdiction of the person of the defendant. Jurisdiction of subject-matter, *i. e.*, of *all* suits arising under the patent and copyright laws, is not disturbed by it, the right to bring suit in the district of the inhabitancy of the defendant is preserved, the right to bring suit where the defendant is found and can be personally served, is not affected, while the right to bring suit where the defendant does not reside, where he cannot be found so as to be personally served, but where he has committed an act of infringement and has a regular and established place of business and an agent, is, for the first time, conferred.

But, whether the construction put upon the Act of 1897 by his Honor, Judge Coxe, or the construction which I have attempted to show it may properly bear, be the right one, it will, perhaps, be interesting for the bar to note that the Act of 1897 only purports to affect “ suits for *infringement* of letters patent,” and, consequently, has no application at all to copyright suits, nor any application to other suits arising under the patent laws, such as interfering patent suits brought under Section 4918, R. S., and suits to obtain patents by bill in equity proceeding brought under Section 4915, R. S. These suits, now, as always since the repeal of the first section of the Act

of 1875 by the Act of 1887-8, are cognizable in any district in which personal service may be made upon the defendant.

The definitive settlement of all uncertainty as to the present jurisdiction of the circuit courts in patent cases is a matter of such transcendent importance to litigants as to lead me to think that a discussion of the subject at this time may not be unprofitable, especially in view of the fact that neither the Supreme Court, nor any Circuit Court of Appeals, has yet, to my knowledge, been called upon to determine the point.

If I have succeeded in setting my wiser brethren to thinking on the subject I feel amply repaid for my efforts.

PROCEEDINGS
OF THE
SECOND ANNUAL MEETING
ASSOCIATION OF AMERICAN LAW
SCHOOLS.

Saratoga, August 27, 1902.

The second annual meeting of the Association of American Law Schools convened in the Court of Appeals Room at Convention Hall, Saratoga, on Wednesday, August 27, 1902, at three o'clock in the afternoon.

The President, Emlin McClain, of the Iowa State University College of Law, was in the chair.

Of the thirty-two members of the Association, the following schools (twenty-one in number) were represented by the delegates named:

Baltimore Law School: Howard Bryant.

Buffalo Law School: Henry A. Bull.

Cincinnati Law School: Charles M. Hepburn.

Columbia University Law School: George W. Kirchwey, Henry S. Redfield.

Columbian University Law School: Charles W. Needham, Melville Church, William Wirt Howe, A. B. Brown. Alternates: Chapin Brown, R. I. Fisher.

Cornell University, College of Law: Frank Irvine, E. W. Huffcut.

Denver Law School: Lucius W. Hoyt.

Harvard Law School: James Barr Ames, Samuel Williston, Joseph H. Beale, Jr.

University of Illinois, College of Law: James B. Scott, William S. Drew.

Iowa College of Law: C. C. Cole.

Iowa State University College of Law: Charles Noble Gregory, Emlin McClain.

University of Maine, School of Law: W. E. Walz.

University of Michigan, Department of Law: Harry B. Hutchins, Thomas A. Bogle, John R. Rood.

New York University Law School: Clarence D. Ashley, Isaac F. Russell.

Northwestern University Law School: John H. Wigmore, Henry Schofield, Frederic C. Woodward, Lester L. Bond.

University of Pennsylvania, Department of Law: Owen J. Roberts.

Leland Stanford University, Department of Law: James Parker Hall.

Syracuse University, College of Law: Frank R. Walker.

University of Tennessee Law School: Henry H. Ingersoll.

University of Wisconsin, College of Law: R. M. Bashford, A. A. Bruce.

Yale University Law School: Simeon E. Baldwin, Henry Wade Rogers, John Wurts, George D. Watrous. Alternates, George E. Beers, Wm. F. Foster, J. H. Webb, E. B. Gager.

On motion of Simeon E. Baldwin, seconded by William Wirt Howe, it was voted that in cases where schools had sent more than four delegates, the four first named should be voting delegates and the others alternates.

The President then delivered his Address.

(The Address follows these Minutes.)

The President: If there is no order of the Association in the matter, I will proceed to call for the regular paper for the afternoon, a paper by Prof. Joseph H. Beale, Jr., on the subject of "The First Year Curriculum for Law Schools."

Joseph H. Beale, Jr., of the Harvard University and the University of Chicago Law Schools:

I had assumed that the difference between the papers of this Association and those of the Section of Legal Education was the same as that suggested by the President in his address; that we should confine ourselves very largely to details, not

interesting to lawyers at large perhaps, but interesting and valuable for teachers of law. I have, therefore, made my paper a short collection of platitudes, which I hope will have the merit of being at any rate suggestive, and of furnishing a number of hooks on which to hang discussion. In preparing for the writing of this paper I have examined with care the curriculum of thirty-two law schools, almost all of them members, or likely this year to become members, of this Association. When I speak therefore of so large a proportion of schools offering a subject, I mean of the thirty-two schools, the curriculum of which I have examined; and, roughly, of the thirty-two schools which are members of this Association.

Mr. Beale then read his paper on "The First Year Curriculum for Law Schools."

(The Paper follows these Minutes.)

On motion it was voted that the President appoint a committee on nomination of officers, and a committee to audit the Treasurer's report. The President appointed as a committee on nominations, Henry Wade Rogers, James Barr Ames, J. H. Wigmore, G. W. Kirchwey and Charles M. Hepburn, and as an auditing committee, C. D. Ashley, H. B. Hutchins and H. H. Ingersoll.

The Treasurer then presented the following report:

August 21, 1901—August 27, 1902.

Dr.

To balance as per last report *,	\$116 87	
dues from 31 members,	310 00	
		<hr/> \$426 87

Cr.

By printing and envelopes,	\$16 00	
clerk hire,	12 00	
expenses Executive Committee meeting,	161 50	
postage and telegrams,	8 72	
balance with Ithaca Trust Company,	228 65	
		<hr/> \$426 87

* This includes ten dollars from a school not yet elected and also ten dollars from a school which paid in advance of election.

E. W. HUFFCUT,
Treasurer.

The President: Without further action this report is referred to the committee already appointed.

The Secretary presented the report of the Executive Committee as follows:

REPORT OF EXECUTIVE COMMITTEE.

The Executive Committee presents the following report of its proceedings since August 21, 1901.

On June 27, 1902, the Committee met in Chicago, Messrs. McClain, Baldwin, Rogers, Curtis and Huffcut being present.

Upon considering applications for membership the following schools were found to comply with the requirements of the Articles of Association fixing the qualification of members, and the Committee therefore recommends that they be elected to membership:

Chicago-Kent College of Law,
Chicago University Law School,
Georgetown University School of Law,
Illinois College of Law,
St. Paul College of Law.

The following resolutions and proposed substitute were referred to your Committee at the last annual meeting:

ORIGINAL: (1) *Resolved*, That after examination by the faculty a candidate who has given one year or more to private study of law may be granted an advanced standing of one year.

(2) *Resolved*, That the Executive Committee be requested to consider and report to the Association what credit, if any, on account of law courses, should be given to students holding degrees in letters or science.

SUBSTITUTE: *Resolved*, That candidates for degrees should not be admitted to advanced standing unless upon satisfying the requirements of Article 6, subsection 1, of the Articles of Association as to preliminary education, and by passing a satisfactory examination in all the subjects of the first year of

the school or by presenting satisfactory certificates of equivalent work in another school maintaining the standards fixed by Article 6 of the Articles of Association.

Upon considering the questions involved in these resolutions your committee adopted the following:

Resolved, That in the opinion of the committee it is not at present advisable for the Association to take any action with reference to the resolutions and substitute, and therefore the Committee recommends their indefinite postponement.

At the last annual meeting the committee was instructed to consider and report whether it is feasible to amend the Articles of Association so as to require schools to send representatives to each annual meeting, and whether schools in default for two consecutive years should retain their membership. Upon fully considering this question, your committee adopted the following:

Resolved, That in the opinion of the committee it is not feasible to require members to send representatives to the annual meeting.

The communication presented to the last annual meeting by Prof. J. B. Thayer concerning an examination test for the passing of students from one year to the next, was also referred to the committee for consideration, and the committee adopted the following and recommended that it be passed by the Association:

Resolved, That no student should be advanced from one class to a higher one without passing a satisfactory examination on the studies previously pursued by the former class.

The committee was also requested to confer with the Executive Committee of the Section of Legal Education of the American Bar Association and consider whether it is desirable to prepare a joint program for the discussion of topics connected with legal education. After such conference, held at Denver last summer, it was thought by both committees not

desirable to arrange such a joint program at present. Accordingly the Committee arranged for this meeting a program not likely to occupy more than the one afternoon which seems at present to be available for the meeting of the Association without conflicting with the meetings fixed by the American Bar Association.

Respectfully submitted,

EMLIN McCLAIN,
Chairman.

E. W. HUFFCUT,
Secretary.

Upon taking up the report for action it was voted that the following schools recommended by the committee for election to the Association be elected to membership :

Chicago-Kent College of Law,
Chicago University Law School,
Georgetown University School of Law,
Illinois College of Law,
St. Paul College of Law.

It was voted that the representatives of these schools present be seated as delegates. The schools were represented as follows :

Chicago University Law School: Joseph H. Beale, Jr.,
James Parker Hall.

Georgetown University, School of Law: George M. Sharp.
Illinois College of Law: Howard N. Ogden.

St. Paul College of Law: Hiram F. Stevens.

The recommendation of the Executive Committee that action upon the proposed resolutions and substitute set forth in its report be indefinitely postponed was, on motion, adopted.

The recommendation that it is not feasible to require members to send representatives to the annual meeting was, on motion, adopted.

The Secretary: The last recommendation is as follows :

Resolved, That no student should be advanced from one class to a higher one without passing a satisfactory examination on the studies previously pursued by the former class.

Charles W. Needham: I want to inquire whether or not that would be binding upon the members of the Association if adopted by this Association. I will give the reason of my inquiry. In the school with which I am connected we have eight examinations each year, and under the rules adopted by the faculty a student who passes successfully six of the eight examinations may be passed to the class above, conditioned upon his making up the other two examinations in the next year or before his final graduation. This resolution would seem to be in conflict with that provision in our school because we allow two conditions in passing from one class to another. If the resolution is to bind the members, and is in conflict with our custom, of course I should like to be heard upon the amendment in reference to it. If it does not bind the members, the general spirit of it I am heartily in favor of.

The President: The recommendation is not binding upon any school. It is a recommendation only; it is the sense of the Association, and not a direction in any respect, because I think the Association does not assume to direct.

Simeon E. Baldwin: I think in the discussion our understanding was that it would mean that no student shall be unconditionally advanced from one class to another. The course of proceeding at Columbian University that has just been mentioned, I presume is pursued in every university,—if not in all, certainly in many,—that the man is conditionally advanced, and it seems to me that as a recommendation by this Association to its members, it ought, if not binding, to be received as of the highest weight; that if the resolutions bear the construction that Mr. Needham has suggested they may, they should be so amended as not to bear it, and I move to amend so as to read that no student should be unconditionally advanced, inserting the word “unconditionally” before “advanced.”

The Secretary: If the amendment be adopted the resolution will read: “*Resolved*, That no student should be unconditionally advanced from one class to a higher one without passing

a satisfactory examination upon the studies previously pursued by the former class."

After further discussion the amendment was adopted and the resolution passed as amended.

The President: The rest of the report requires no action.

The next item is a report of a sub-committee appointed by the Executive Committee in accordance with the action of this Association last year on the subject of law school degrees. The report of that committee will now be heard. The committee consists of Professors Wambaugh, Scott and Kirchwey.

James B. Scott then read the following report:

REPORT OF SPECIAL COMMITTEE ON LAW DEGREES.

We have been asked to make a report upon law degrees. To that end we have ascertained what degrees are conferred in the United States and in other countries, and have discussed with one another the proper basis for degrees. We now present the essential parts of our results.

The subject naturally divides itself into the two heads of the first degrees in law and the degrees conferred for advanced study in law.

As to the first degrees in law we find that the present practice in the United States and in other English-speaking countries is singularly uniform; for, as far as we can ascertain, in all these countries the first professional degree that is conferred upon a student of law is a baccalaureate. In the form of the baccalaureate there are some slight variations. In two or three of the law schools in the southern part of the United States the degree is Bachelor of Law, and is abbreviated as B. L.; and the same form is found in Scotch universities in recognition of two years of professional study not preceded by a degree in arts. At Oxford and at some British colonial universities, the form is Bachelor of Civil Law, and is abbreviated B. C. L.; and this same form is conferred by a few American universities in cases where the student's course has included a substantial amount of work in the law of Rome.

With the exceptions indicated, the first professional degree taken by law students is, in all English-speaking countries, the form Bachelor of Laws, and is abbreviated as LL. B.

It has recently been suggested, however, that in some American law schools the requirements for admission are so high as to justify the discarding of the baccalaureate degree in law and the establishing of a doctorate. In favor of this suggestion it is urged: (1) That the change in the requirements justifies a departure from the long-established LL. B.; (2) that in German universities the degree in law, which is based upon about three years of professional study subsequent to a general education similar to that afforded by an American collegiate course, is a doctorate; (3) that the proposed doctorate may be discriminated from the honorary LL. D. by using some such form as Doctor of Jurisprudence, with J. D. as an abbreviation; and (4) that the new doctorate will not seem too dignified for the occasion if it be compared not with the honorary doctorates in laws and in divinity but with the doctorates in philosophy. The objections are: (1) That only very cogent reasons will justify, in the eyes of the profession, a departure from the uniform British and American practice of granting a baccalaureate as the first degree in law; (2) that the practice prevails in English-speaking countries even in institutions where the degree in law pre-supposes a degree in arts, for example, at Oxford and—for LL. B. as distinguished from B. L.—at the Scotch universities; (3) that any form of doctorate heretofore suggested means either the danger of being confused with the honorary LL. D. or the still more serious danger of sounding extremely unfamiliar and grotesque; and (4) that the doctorate in philosophy has not yet become so familiar to persons outside of universities as to make a doctorate seem an appropriate degree for a very young man unless, indeed, he is a physician. In the opinion of the committee the strength of the argument for the proposed doctorate rests entirely in the allegation that this degree is to be the equivalent to Ph. D. Consequently it is important to insist

that the law schools conferring the new degree must give good measure. We find that either by rule or by practice the doctorate in philosophy is normally obtainable three years after graduation from college, and that it is very seldom conferred at an earlier period. We therefore, without recommending that the proposed legal doctorate be or be not established, earnestly recommend that a doctorate conferred as a first degree in law must mean (1) that the doctor graduated in arts or in science, or in philosophy or in letters before beginning his work in law, and (2) that his law study extend over three years, and (3) that his law study was pursued in a law school where at least three-fourths of the students were college graduates, and (4) that his work was fully equivalent, both in extent and in thoroughness, to the work for which the degree Ph. D. is conferred in the same university; and we recommend that in all other cases the first degree in law should continue to be a baccalaureate, and that such baccalaureate should represent not less than a high school education and three years study of law.

As to the other head of the subject, namely, degrees for advanced study in law, little need be said, for very few persons engage in such study or are likely to engage in it. There are, however, at least ten American law schools in which one year of work subsequent to the attainment of the baccalaureate in law is rewarded with the degree of Master of Laws, abbreviated as M. L. or LL. M.; and there are a few in which the same, or some greater, amount of work is rewarded with a doctorate,—usually the degree of Doctor of Civil Law, abbreviated as D. C. L. It seems to us that the degree of Master of Laws is appropriate for the purpose for which it is used; but, of course, the adoption of a doctorate as a first degree in law would necessitate the devising of some further doctorate for students pursuing advanced work in case the law school should wish to encourage prolonged residence. Of the existing doctorates for advanced study, we repeat what we have urged as to the proposed doctorate intended as a first degree

in law, namely, that any doctorate in law must be so carefully guarded as to be safely the equal of the doctorate in philosophy, to the end that the members of the legal profession may not seem to be guilty of the absurdity of claiming higher titles than are their due.

EUGENE WAMBAUGH,
Chairman.

GEORGE W. KIRCHWEY,
JAMES B. SCOTT.

The President: The report is received. What action is it desired to take at this time? Unless some action is proposed the report will be placed on file.

Charles W. Needham: I want to ask whether that will be printed? I hope it will be.

The President: It will be printed, and it will, of course, be subject to being called up at any subsequent meeting when it is desired to take action.

The next order of business will be the discussion of papers presented this afternoon.

Isaac Franklin Russell, of the New York University School of Law: I was profoundly impressed by the paper read by Professor Beale, and I think we are fortunate in having had the opportunity of listening to that paper. I think I agree with nine-tenths of it, perhaps more, without qualification; and it takes some measure of assurance to differ at all with the gentleman, who is the only one present, so far as I know, who represents not only one law school but two law schools,—two great law schools,—the oldest and the youngest. Beyond that, if I am right, the gentleman who has favored us with this paper is the only one who, under the stimulus of a fee and the reward of a generous salary, given by our most prodigal university, has made a recent and up-to-date study of this subject, a minute and careful study of it. However, the personal equation is something that we have to consider. I am the victim of it. I apprehend that Professor Beale is a victim

of it. He comes from Harvard University, and there they have, and for several years have had, as I understand it, no students except those who are Bachelors of Arts. Simon Greenleaf, I believe, if alive now, could not get in; he would have to come down to where Professor Ashley and myself have our humble school and are doing our modest work. I cannot well understand how our friend could have said that all the time spent in the study of elementary law is worse than wasted. I believe I am correct in quoting his words. I am bold enough to think that he is wrong, and to stand here and say that I believe that he is altogether wrong, except from the standpoint of Harvard University, and of this "Greater Harvard" at the centre of the continent where he has gone to continue a very great work. We are not so fortunate in the City of New York. Near the City Hall there are a large number of individuals—millions of them—who haven't any A. B. from the select colleges whose names are published in Harvard's catalogue, making up a minority of the degree-conferring colleges in this country. I am bold because I understand that Blackstone and Kent and Dwight and others have made the mistake some of the rest of us have, which I have made,—for I have been compelled to support a large family for twenty-two years by the teaching of elementary law with other subjects. I want to say something with reference to elementary law. The apology for it was condensed and rapidly hurried over by our eloquent friend, Professor Beale. I think it is sufficient; and I think the only point that I am going to make is one that can be found in Professor Beale's manuscript. I think the trouble in connection with teaching is very largely linguistic. It is a matter of words. Some philosopher, I don't know who, has said: "We cannot think except in words, and if we have any thought we can express it, and we can express it in words." Many of us are not so fortunately circumstanced as the learned Professor from Harvard and Chicago, and we have students flocking around us who need instruction in the vocabulary of

the law. Go, for instance, to any medical school, and hear these learned men as they discourse; or cross-examine a medical expert and note the words that roll off his tongue. I remember being present at a trial when a bright lawyer was cross-examining a doctor. He asked him, "What is the matter with this plaintiff?" and the doctor rolled off something that would take about three lines in a newspaper, full of Latin and Greek and mysterious words hyphenated and learned, and it all seemed to produce a big effect on the jury, and they stood ready apparently to render a verdict for thousands. Then the lawyer walked up close to the witness on the stand, and said, "Doctor, look at me, look in my eye. Haven't I got it?" And the witness said, "Yes, you have got it." It was the Latin for a bloodshot eye that this learned man had thus glibly delivered. So I say that I have had difficulty in the first week and in the second week, in the first month and in the second month by having students come and say, "Professor, you spoke of 'at law and in equity,' what do you mean by 'at law and in equity?'" "You referred to the 'Statute of Frauds,' what is that 'Statute of Frauds?'" "You spoke about an 'alternative mandamus and the return of the writ,' what is that?" "You spoke about an 'heir and next of kin,' what is this 'heir and next of kin?'" I have found that it has taken a long while to get sufficient familiarity with the common language of the law. It takes too long to omit any such subject as elementary law. If I understood elementary law to embrace such topics as are treated in my distinguished friend Professor Keener's work on Jurisprudence, then I could quite agree with Professor Beale and others. Such topics, I apprehend, should be really in post-graduate studies; and I think it a futile task to interest first year men at law school in analytical and philosophical jurisprudence and similar hard studies. I want to call the attention of the members of this Association to the happily circumstanced students of Professor Beale's who have enabled him to reach this conclusion that elementary law need not be studied, and to call attention to

the fact that the rest of us, having students that are relatively less advanced in general education, find it very valuable and useful to follow the course of Kent and Blackstone and Professor Dwight and others whose names still linger among us, in giving considerable attention to elementary law, for the purpose of teaching the language of the law and its first principles. It has been said by a great joker that there are only about thirty-seven jokes. Similarly it is said by somebody that there are only about thirty-seven original dramas. Now Professor Robinson in his last work, "Elements of American Jurisprudence," has shown that there are really only a few great legal principles. I believe it is useful after the habit of our German friends who begin their great works with about a hundred pages of introduction, to give a panoramic view of the law, and to linger in this work for some weeks or months in accordance with the custom of our fathers. I propose to do it until the Dean of our school, whose leadership I follow and whose authority I recognize, substitutes some other plan. I shall continue to believe that that is the most important of all the subjects in the first year's course.

John H. Wigmore, of Northwestern University School of Law: The gentleman who has just sat down referred to his arduous career of twenty-two years in bringing up his large family. During that time he must have had experience with the modern system of educating children; he must have learned that it is no longer the fashion to teach the alphabet, but to teach entire words at a time. Twenty years ago we should have heard gentlemen in his position saying "How absurd to teach children to read by words! How impractical to expect them to understand 'd-o-g' until you have taught them what 'd' and 'o' and 'g' is!" Without enlarging upon that, I think you will see what we mean when we say that it is not worth while to teach students definitions of law and equity and mandamas and the like, when they will sufficiently acquire these things as they go on. They will better learn by words of law, and not by letters of law. I took the

liberty of speaking upon this subject because I am a convert to my present creed. When I left the law school I thought myself (not perhaps then, but later) to have been ill-used because I was not led by the hand through the A, B, C of elementary law; and I determined, when it came my opportunity, to do what I had not been done by, and to see that at the opening of the year every student had some sort of course in elementary law. While it was not placed entirely in my hands, yet I did take the bulk of it myself, and, of course, I must make all the necessary discount for my own incapacity to do justice to the subject; but still I did have enthusiasm. At the end of the course, however, I felt convinced that there was no place in the curriculum for elementary law,—and this for the reasons that Professor Beale has summed up. This conclusion was brought home to us in our school by experience and by a thorough conversion. To be sure, all of us here understand that there is, or ought to be, at the opening of every course a little sketch, possibly for a lecture or two, of the geography of the subject. “We are now going to study Africa, and Africa is so and so;” “we are now going to study Contracts, and contracts is a little corner of a large group of subjects thus and thus arranged.” Every member of the faculty can be expected to do this much for his own courses. But that is a different thing from a special and separate course in elementary law; and it is intended only to show the student what the relation is between the various subjects he is about to take up. It is, in brief, the geography of the question, and it need not take more than a week at the most. I would make that one concession. But on the whole, I would recommend, to any who are in doubt, to give up the course on elementary law for one year and to spend the time on something else, and then to see if they do not feel that they and the school have profited by the alteration.

Clarence D. Ashley, of the New York University School of Law: I should like to add a few words. I agree with Professor Beale, practically, in all he has said, and he may not disagree

with what I am about to suggest. I must say that I think perhaps a month or two upon a course such as I am accustomed to give during the first two months of the first year is valuable. I do not know that elementary law is just the term for it, but I do think that there is a place for a course such as Professor Keener very aptly termed elementary jurisprudence. I took the hint from him. He had given such a course in the Columbia Law School as an introduction to the study of equity jurisdiction. I have given such a course for two or three years. I do not undertake to follow Blackstone and Kent or very closely the little book that Professor Keener himself prepared for that subject; but I have found that it is valuable, as was suggested by the last speaker, for students to know the difference between a contract and a tort, a quasi contract and so on, and that you can in a brief course and with brief discussion give these distinctions better than in other courses. I have found that at the end of the course you can take the articles of Professor Langdell on "Rights and Remedies" and treat them as an introduction to the study of equity. I have had men say time and again that if they had only elected that topic, not because of any excellence on my part, but because of the subject-matter, they would have been benefited during the entire course. I believe that Professor Keener has dropped that course, but from a conversation with him I am satisfied he thinks it a pity that it has been dropped. We give in our school two hours a week for two months to such a course, and it is a very convenient place in which to bring in matters that do not seem to fit very well elsewhere.

William Wirt Howe, of Louisiana: I think the question which has been discussed thus far in regard to the very interesting paper of Professor Beale has been pretty well exhausted, and I will not undertake to add anything to that particular matter, but, taking a general view of these topics, I merely wish to express the great interest that I felt in Mr. Beale's paper, and the curious manner in which I was reminded, while I heard it read, of the continuity of legal

thought in the history of the world. In the sixth century, Justinian, who had the advantage of possessing a very learned judicial council headed by Tribonian, made certain regulations in regard to law schools. There were at that time some five important schools in the Roman empire, and Justinian, who had a genius for regulating things, published some valuable instructions in regard to their administration. The course at that time was five years. We have not yet returned to that type of legal study which existed in the sixth century, but I suppose we may arrive there some day. The first year course in the Roman law schools of that period resembled that outlined by Professor Beale. The text-book used was the "Institutes of Justinian." I believe the Roman law student at that time was confined for an entire year to that little book. The Romans were a very concise people. The entire *corpus juris*, as our friend Russell knows, was not as long as one of the volumes of the Century Digest printed by the West Publishing Company at St. Paul. It was, perhaps, half the size of one of the volumes of the Annual Digest; and the Institutes was a very little book, I suppose, because the Romans were so fond of conciseness. For instance, the entire law of Rome on the subject of habeas corpus was included in six words. Of course, they were very fond of commentary and disquisition in a professional way. They took that little book called the Institutes, and I suppose the professors commented upon it and taught it and expounded it and cited cases, just as our friend, Professor Dwight, used to do, but the order of exercises, the evolution and the development of the course in that first year was like what Professor Beale has advocated,—not that he plagiarized it, but that the effort of the human mind in that direction is apt to take the same course at various periods of the world. So the Romans began with some general observations on the subject of law. Then they proceeded to the Law of Persons, which was one of the three great subjects of jurisprudence. Then they went to the law of Things or Property in which persons might have rights. Then they

went on to the study of Obligations by which persons may acquire or lose rights in things, and then they wound up with procedure by which persons may vindicate the rights that they have in things, and if you remember the general outlines of the Institutes, you will find that the subjects they pursued during that first year were much the same as those recommended by Professor Beale.

Henry H. Ingersoll, of University of Tennessee School of Law: Legal education, I assume, we all regard as, in part at least, the passing to the unknown from the known. It seems to be generally conceded that the first subject to be taught is Contracts. To my mind that is not logical; and I believe that we lose time in pursuing such a course, although I confess it is the one pursued in our state university. The step from those things that are partially known to those unknown is a shorter step than to the entirely unknown from the known; and the course pursued by Justinian, as related by Judge Howe, seems to be the more natural one, and I suggest it, not by way of criticism, but merely for consideration.

The first thing that the young law student wishes to learn about is Persons, for they are familiar to him; and so I think the natural order in study is first of Domestic Relations. Then the next thing which he knows most about and the easiest step he can take is in the Law of Crime, because to most minds the Law of Crime is already fairly well known. Thus the subjects which seem appropriate to study first are Personal Relations and Crime; and related to Crime as pertinent to matters of natural and legal duty, comes next the subject of Torts; and, after that, the law of Contracts; and then I should say follow the order suggested by Professor Beale. I throw this out for consideration and discussion not because now it is an approved course. Perhaps it never has been approved since Justinian's day. But it was the order of study then pursued; to my mind it is the logical order now.

Simeon E. Baldwin, of Yale Law School: I hesitate to accept Judge Howe's description of the Institutes as setting

forth a set of treatises such as were suggested in the paper of Professor Beale. If we are to seek the English or American book that comes nearest to the Institutes, surely it would be Blackstone's Commentaries. In other words it seems to me that Justinian himself, from what he tells us in the preface of the Institutes, made the Institutes, or had them made, as a means of bringing elementary Roman law into orderly shape before the Roman youth—the "two-penny" fellows who were not able to eat strong meat but must take the elements of law and have them marshalled in order for proper consideration. It seems to me, therefore, that so far as the precedent of Roman law is concerned, it is entirely in accord with the practice of the majority of the American law schools, and if we are to accept the classification, which, I think, has no very great merit, of the inductive system of teaching law as something distinct from the deductive system of teaching law, then I say that the Roman method was to begin with the deductive system, and that the Institutes conspicuously illustrate it.

Hiram F. Stevens, of St. Paul College of Law: I believe the restraints which exist in the Association, as to debate, will not prevail here. I have, so far, said nothing on this subject, because I knew nothing; but it has been entertaining, for here we have Judge Howe, certainly the highest authority in America (if anybody is superior anywhere upon the subject of civil law), and I suppose there are *elements* in that law and this highest authority that we know upon that law which is "civil," as well as some of these others who are the highest authorities upon that which is not "civil," do not agree at all as to what "elementary law" is. Now, it seems to me that, while there ought to be some interest in the question of whence a man comes, there should be more as to where he is going, and what he is. Certainly, a distinct statement, that elementary law is not worthy of consideration, is very much like saying that, before a man attempts to understand a science, he must divest himself of all understanding of the words that are the vehicles in which knowledge of that science is con-

veyed. Now, as I said, I know nothing about it, and I do not think I have conveyed any information; but this idea struck me, that what we are to discard and ignore ought to be in some way limited and defined, so that we should know when we encroached upon the domain.

C. C. Cole, of Iowa College of Law: I do not believe that I have any special light to shed upon the subject, but I do desire to express my approval of the paper read by Professor Beale. There are difficulties connected with the subject which I have fully appreciated. In 1865 Judge Wright, of my state and then on the Supreme Bench with me, now deceased, and myself organized a law school. I had had the benefit of instruction at Harvard in 1846 and 1847, and my brother, Judge Wright, had had some instruction in an Indiana institution, and we wanted to provide a curriculum for our first year's course. We looked over the various subjects. We very readily rejected Blackstone as a proper subject, among other reasons the ever-mentioned and never-forgotten one that so much of it is obsolete, together with the general difficulty of its comprehension. But what subject should supply its place; what subject should be had the first year? There was no such classification in the law books as in the school books; there was no first reader or second or third. We commenced with a work on contracts. We took Kent's Commentaries. We supplemented them with a work on agency and bailments and partnership, and managed to work out the year, which was the full course at that time. We continued that instruction for two years ourselves alone in connection with the duties of the bench. The third year we were fortunate to be able to associate with us Prof. Wm. G. Hammond, a most scholarly gentleman, having attended Heidelberg for some two years or more, who acted as our secretary and professor, and he, from a scholastic point of view, was able to render us some assistance in the curriculum. But some students would come in at the middle of the year and wonder whether it was better to begin then or wait for the be-

ginning of another year and then take the year as it should come, and get the benefit of the full year's course. I do not know whether it may have been the necessities of the occasion, but I remember to have suggested the thought that there was not any first or second book of the law, and that it would not make much difference when they began, because the study of the law is like a merry-go-round anyway; you may get on where you please and then complete the circuit. But I have given attention to that subject since and have wrought out in my own way, perhaps too much, the curriculum which is in accord, I think, with Professor Beale's, and I do not know but that he has classified my curriculum for 1902-3 with the majority. Of course I have had the benefit in modern years of the various catalogues and the programs for study; but I have one qualification to my general approval of Dean Beale's first year's course, and that is that I have not brought my personal judgment to a thorough endorsement of the idea of teaching pleadings the first year. We have three years. I think it better to defer it until the second year; better to defer it until it is proper to introduce a topic like evidence, if you please, so I would want to modify Dean Beale's outline by striking out pleadings and substituting some other subject. I simply rose, Mr. President, to give my endorsement generally to that paper, and as being the endorsement, not merely of study and reflection, but of experience and of effort, primarily in more or less of darkness, to map out the correct curriculum for the first year.

I think the plan outlined is most admirable, and we will all of us find it of very much advantage. Of course if one school teaches but ten hours a week and another teaches fifteen, there will be an opportunity for an enlarged curriculum the first year or a more thorough treatment in the class-room of the topics pursued. I wish to give to the paper read my endorsement with perhaps another qualification or two not necessary now to mention.

George H. Fall, of Massachusetts: I do not want to take the time of the gentlemen for more than a moment, but the paper of Professor Beale and the criticism by the gentleman in front of me both indicate two widely divergent courses of thought and action on the entire subject of law. Professor Beale represents the student who has no opportunity to go into a great master lawyer's office and learn at the feet of some Rufus Choate or Daniel Webster the principles of law. He represents the mass of common men who have to study the law in some way; and the question is, How are they going to do it? Now the criticism by these gentlemen brings out the other view, whereby, as the Chief Justice says, in a merry-go-round sort of way the boy of brains goes into an office and pitches in anywhere, and in a year or two he knows the law. Some of the greatest lawyers have been taught in that way; but you cannot teach law in that way, and the law schools cannot. Two very opposite courses of action are here outlined. This Association must stand by one or the other. They cannot stand by the course this gentleman has outlined because the conditions are wholly antagonistic to standing by them. I want to put on record my belief, after trying for sixteen years in a feeble way to teach Roman law, and having seen a good many hundreds of students, that there is no working method except by dividing the thing up, and giving a man certain opportunities to learn the first year and then adding certain other opportunities the second year. I cannot wholly agree with Mr. Howe either. Mr. Howe will remember that Justinian made his classification at the time the Roman law was beginning to decay, and so he thought to devise some means to improve on the methods, namely, to compel students to sit at the feet of the jurisconsult and learn in that way. A favored man can learn law on the merry-go-round plan, but the great mass must learn some other way. Professor Beale has hit the bull's eye squarely when he says you must begin at the beginning and learn the law. The terminology is that the "blood-shot eye is a terrible thing," but the terminology must be mastered by the

men. What are you going to do with it? It is in the law, and students find the law much worse than it was to the students of the old days when there were fewer corporations and partnerships. You must follow Justinian's precedent; you must divide up the law and teach it in some sort of sequence. I am speaking generally. You will see that Professor Beale has hit what must be the method of the man who is to study law under the conditions of the present day.

Hiram F. Stevens, of St. Paul College of Law: I had supposed that Harvard had not departed from her traditions, but that she was still allegorically at the feet of Webster and Choate, but it seems that Harvard and Columbia now represent the "hoi polloi," while we, of the uncultured West, are among those who seek to inculcate pure learning without regard to its results. It has been said here that the Romans were concise. They were; they were laconic. They mingled history and prophecy. When a man was unpopular with the Roman powers they merely said of him, a little later, "He has lived." That took care of him. There is a good deal to be learned there. But, certainly, Judge Cole has furnished the solution of the whole thing. We have been on the wrong track (and I do not wish to be considered as speaking sarcastically). I think some of us have reduced things to possible absurdities. We are beginning at the wrong end. We are seeking, by a course of training, to accomplish certain results. Judge Cole has shown us how to equip our colleges. Take two judges of the Supreme Court and add to the staff a "scholastic;" and what was "unknown" theretofore becomes the "known;" because it has been announced from "the bench." What we want to do is to select our college faculty.

William Wirt Howe, of Louisiana: I was reminded by what was said by Judge Ingersoll, of Tennessee, that perhaps my recent remarks might be misconstrued, and I think that perhaps an explanation is due to our learned friend, Judge Baldwin. When I spoke of being reminded of the rules laid down by Justinian for the first year in the law school, I did

not mean to say that the order of exercises was precisely that laid down by Professor Beale. I agree with Judge Ingersoll that the order laid down in Rome is more logical for the first year course than a course commencing at once with the law of contract. What I meant to say was that that first year course in the law school, for example, of Justinian, included the very topics which Professor Beale considers as proper to be studied in the first year course. The order, however, was different, and I think, better. The student was first told what were persons, whether natural or artificial. He was then told what the different kinds of property were in which persons might have rights, and then he was told what the law of obligations was by which persons might acquire property, or might part with it; and when they came to divide that law of obligations, they then took up Professor Beale's course, first obligations springing *ex contractu*, then obligations springing *ex delicto*, and then those obligations which spring from the arbitrary action of law. Then they believed, as Professor Beale thought, that during that first year the student should be enlightened about how all this elementary law was to be applied in actual life, and that is by the law of actions or procedure. I remember perfectly well having studied in my senior year with Professor Dwight, and being entirely in the dark as to how all these doctrines should be applied, and it was not until I went West and took up the Missouri code of practice that I saw a great light, and how these doctrines which I had learned under Professor Dwight could be applied. So then, while I mean to say that Professor Beale's schedule of topics is much like that which was taught in the first year of the Roman law school, I think the order suggested by Professor Ingersoll, and which is followed in the Institutes, and which has been adopted by Blackstone and Kent, and a good many of our civil codes, is more logical.

Charles W. Needham, of Columbian University: Permit me to say a word in reference to two of the subjects treated in this very able paper. It is impossible for me to comment to any

extent upon the paper without giving it more consideration and reflection. I want to read it. It will bear study, I am sure, for it is a very learned presentation of the subject. There are two points, however, upon which I should differ with the positions taken.

First, with reference to the "Elementary Course." It depends largely, as has been suggested, upon what is meant by the phrase "Elementary Course." If it means the study of Blackstone or Kent with the view of covering the entire field of law I should agree with the paper. In our school I teach that subject. I first called it "The History and Classification of Law." I have since put it into the catalogue as "Elementary Law" because it seems to me to be foundation work. I undertake to give the students an outline of the history and development of the common law of England up to the time that law was adopted in this country, in order that they may understand how the common law grew up in England.

This not only gives the student the outline of the common law, but also makes clear to the mind that law is a growth and did not come to us on tables of stone, nor as a complete system, but gradually developed to meet the needs of the people. With this conception the lawyer called upon to construe a rule of law and apply it to a concrete case looks to these conditions out of which it is developed in order to determine the application of the rule.

Then I state and define the sources of law and give to the student an idea of the comparative value of laws emanating from different sources, distinguishing also the difference between the operation of common law and statute law; as for illustration, a statute is passed which modifies or suspends the operation of the common law; that statute is afterward repealed; the common law springs into force again and in this regard is quite unlike a statutory law. It seems to me one of the first or fundamental things for a student to understand in order to give proper weight to common, statutory and court-made law.

Take again the subject of the status of persons, the general laws have reference to the normal status; it seems to me that the student should acquire at the beginning a knowledge of the status of persons—normal and abnormal—otherwise he cannot understand why a law operates against one person and does not equally apply to another.

Again, take the decisions of courts; we study cases very largely, but the student must be taught that there is weight to be given to one decision which is not to be given to another. A decision by the Supreme Court of the United States has a far reaching effect not possessed by that of any other court in this country. So in the states there are the supreme court of a state, the appellate courts, and the courts of original jurisdiction. What force, effect, and relative importance are to be given to these decisions respectively, is an important subject of study. In this course which I now call "Elementary Law" I go into these subjects and try to give the student an understanding of the growth and development of law into a system, its sources, the relative value of law from these various sources, and the status of persons upon whom law operates. It does seem to me that it is absolutely essential that the student should be first instructed upon these topics before he is competent to study any special branch of the law. Certainly, if these subjects are not pursued in a general course it is necessary to take them up and treat them separately in each branch of the study.

One other objection to the position taken by the writer of the paper. He puts pleading in the first year of law studies. I cannot understand how a student can grasp the subject of pleading until he knows something of substantive law. What can a man do with pleading, which consists in stating rights and the wrongful invasion of rights, until he knows something about rights or substantive law? I made this inquiry of the learned Secretary of this Association last evening in discussing this question, and he said, "If I teach a student the law of torts, can I not commence immediately and teach him plead-

ing with reference to actions of this sort?" Surely you may, but that admits the whole argument. You teach him first the law of torts, and then how to plead in courts to recover damages for injuries. It seems to me that substantive law comes first and pleading naturally follows. I admit that pleading throws light upon substantive law and much substantive law is learned in studying pleading, but pleading seems to me to follow the general study of substantive rights. The statement has been made that the substantive law of England grew up by pleadings in the court. This is a half truth. It grew up first in customs, recognized by the people, and then by pleadings, those customs were stated to the court and by the judgment of the court the customs were raised to the dignity of laws. But in these cases pleadings came after knowledge of the custom and did not create the substantive right. I should put pleading in the second year, after a man had grasped some of the principles of substantive law.

With these exceptions, I desire to endorse most heartily the statements and conclusions of this very able paper.

Mr. Hoyles, of the Law School, Osgoode Hall, Toronto: I have to claim the indulgence of this meeting in saying the very few words that I am going to say, because I have no right to say them at all. I am not a delegate to the meeting nor a member of one of your law schools, and I am quite content, Mr. President, and I shall agree with your ruling as perfectly just, if you should say that I had better sit down or leave the room, but I have listened with a very great deal of interest to the paper in the first place and then to the discussion which has followed, and I do not think that we could very well have a much more practical subject and a much more important subject than that which has been presented to us in the paper, and which has been, to a large extent, followed in the discussion this afternoon, and that is, are you to have such a thing as elementary law at all in the first year, or are you to plunge (so to speak) *in medias res*, which I understand to be the meaning of Professor Beale, and put the student into criminal

law, torts, insurance or whatever it may be (just whichever may happen to suit the teacher's ideas), and leave him to fit that in, if he can, with his general knowledge, and to pick up the forms and ideas of law as best he can by picking out one thing after another as he comes to it, and, finally, by putting them all together, the supposition is, that he will have a complete view of our legal system. Now I must say that I think this question lies at the whole foundation of our legal training. I must confess, if that view is right, that I am entirely wrong and my law school wrong; and I quite agree with what Professor Needham has said in regard to the necessity for having something in the nature of a general survey of the origin and sources of the common law. I am a little at a loss owing to not being familiar with the text-books referred to this afternoon. In the institution with which I am connected we use what I consider to be a very valuable book, Broom's Common Law, which practically covers for English law just what Professor Needham indicates is the case with the treatise used by him. We have not only graduates,—a very large proportion are graduates, they are not necessarily so,—but we have others who are not graduates, and we find this book equally useful for both. For a person not a graduate it is absolutely necessary that he should have something like a general survey of the matter that he is to enter upon—a general idea of the relation of the different kinds of law. Then as to graduates we have found that as to legal principles they are just as hopelessly at sea as those who have not had the advantages of a university training. I really venture to speak here for the purpose of inviting some further discussion upon this very important subject because I feel it is very important. I do myself think it is most important that the students should get such a general view of the law as is given in that book, Broom's Common Law, and in that which Professor Needham has indicated, and, in my opinion, any law course that does not give this is not efficient and does not give the student the best chance to get an idea of the country that he is going to

travel in, such as would enable him intelligently to take in and appreciate the various outlines at least of the scenery, which will be the case if he has that general view given him. I merely rose for the purpose of giving this as my very strong opinion, and I sincerely hope that some of the gentlemen here who have not yet spoken will give their views pro and con. I do not agree with the gentleman from Tennessee (even though Justinian may be against me) in taking up what your students like to take up, such as personal relations or criminal law. They would like to wander along the "primrose paths" if you give them a chance, but I do not think that is the proper way of dealing with them; I do not act upon it myself, and I prefer myself to begin with contracts, but I do not intend to advocate that now because my real reason for speaking is the important question, "Is elementary law, as outlined by Professor Needham, to be taught in the law school or not." I think it should be.

I thank you for the privilege of presenting my own doubts and difficulties. As one gentleman has said as to himself, I have certainly contributed nothing to the stock of knowledge. I have simply tried to throw doubt and difficulty where there was perhaps already enough, but I thank you for giving me an opportunity to do that.

A member: I move that we proceed to hear the report of the Committee on Nomination of Officers or the reports of both committees named.

A member: If the gentleman whose paper is under discussion would like to reply, I think we should be very glad to hear from him.

The President: If the gentleman desires to waive his motion, the Chair will recognize Professor Beale if he desires to say anything at this time.

Joseph H. Beale, Jr.: The Association is very kind. I hoped that what I said about elementary law would stir up discussion, and I am glad to see that it has. I do not mean to

imply that any course given by a good teacher will not be a very delightful and useful course. If Professor Ashley or Professor Keener spoke on the law of the Medes and Persians, what they said would be well worth hearing; they could not help giving their hearers something that would be both delightful and instructive. That is not the question. Nor do I mean to say that the students must not learn the difference between statutes and common law, or how the common law came to be what it is, or what happens upon the repeal of a statute, or what is the meaning of mandamus or of some other term of law. Of course those things must be learned; that is what the student is there for. The question is how can he best learn them. How do we learn the use of language? By having some one lecture to us on the meaning of "apple?" Anyone old enough might go to the dictionary to find the definition there given; but above all we find out how the word is actually used in conversation. How is the student of law to find out the meaning of legal terms? Not by listening to lectures on that meaning but by going to law dictionaries, and especially by finding out how in the course of his study of the law those terms are used. He has got to learn the term in connection with its actual use in legal language. Then the student must find out something about the history of law. He has to know that by a certain process the common law of England came to be what it is, how and when it was brought over to this country and came to be our law, and how it was modified from time to time by constitution and by statute. That must be taught to him. How does he learn it? He learns the history of a subject when it comes up in connection with his study of that subject. When I try to teach criminal law my first two or three lectures are devoted to showing how criminal law came to be what it is; not to a speculative discourse on law generally, but to tracing up the history of criminal doctrines and how they came into being. When my friend goes to work on a course in contracts he has a good deal to say in his first lecture beyond the fact that a contract requires

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mutual consent. He cannot teach that alone; it is taught in connection with all sorts of things, because what the student is trying to learn is not that little fact by itself, but the law, and the whole law has got to come into each lecture, so far as it can find a place there. All I am saying is that it is not worth while nor is it the best way of teaching to separate these elementary or historical things and put them by themselves into a single course. I do not say it is not a good way, but it is not the best way; and my friend would give just as much information to his classes and more, and would be more useful to them if he were giving himself to them, not in some little corner under the name of elementary law, but in the full and scientific discussion of each topic of the law as he takes it up.

Henry Wade Rogers then reported for the Committee on Nominations as follows:

For President: Simeon E. Baldwin, of Yale University Law School.

For Secretary-Treasurer: E. W. Huffcut, of Cornell University College of Law.

For members of the Executive Committee: Emlin McClain, of Iowa State University; George E. Kirchwey, of Columbia University; and Joseph H. Beale, Jr., of Harvard University and Chicago University.

The report was adopted and the candidates named were declared duly elected.

Clarence D. Ashley, for the Auditing Committee, reported that the committee had examined the Treasurer's report and vouchers and found the same correct and recommended that the report be approved. On motion the report was adopted.

The Secretary: I should like to call the attention of the Association to the fact that the Minutes of the meeting of 1901 have not been approved by the Association. They were printed in the report of the American Bar Association and they have been separately printed and may be had here at the desk.

William Wirt Howe: I move that the reading of the Minutes be dispensed with and that they stand approved as printed.

Seconded and carried.

The Secretary: I have been requested by a member of the faculty of one of the schools belonging to the Association, who is not here in person, to present this resolution:

“Resolved, That a special committee be appointed by the incoming President to consider and report whether it is feasible to recommend to the high schools a course of study for students intending to pursue law, and if so, to prepare and submit such a proposed course.”

I should like to move a resolution for the appointment of such a committee.

The motion was put by the President.

The President: The Chair is in doubt. I will ask for a rising vote.

The motion was lost on a rising vote.

The Secretary: I desire now to move, in my own behalf, this resolution which I fear may meet the fate of its predecessor:

Resolved, That the Executive Committee be requested to consider and report upon the feasibility of the establishment and publication under the auspices and control of the Association of an American Law School Review.

Seconded and carried.

On motion the Association adjourned *sine die*.

E. W. HUFFCUT,
Secretary.

ADDRESS OF THE PRESIDENT.

BY

EMLIN MCCLAIN,
OF IOWA CITY, IOWA.

At the opening of the second annual session of the Association of American Law Schools the thought uppermost in the minds of the members is that since our last session the first President of the Association, one who aided at its organization with his presence and his counsels, has passed from us. James Bradley Thayer was a law teacher of long experience and widely known. He had the faculty, as those who sat under him seem to universally testify, of arousing an interest in the problems of the law considered in and of themselves, without invoking the aid of any intrusive personal influence. His pupils felt that they were concerning themselves with the study of law, and not with the views of Professor Thayer. And so skilfully in his quiet way did he bring to the attention of the members of his classes the varying considerations bearing on the questions discussed, that the student felt his judgment to have been strengthened, his perception quickened and his breadth of view enlarged at the same time that the leading principles of the law were being put down in his catalogue of acquired knowledge. Professor Thayer seemed to aspire to be a guide and counsellor, not a magnetic leader, and in that aspiration embodied the soundest judgment as an instructor in the law. But the benefits which his pupils derived from his instruction were greatly enlarged by reason of the influences flowing from the personal qualities of the man. His education was broad, and he was in sympathetic relations with all that concerned the widest humanity and the best citizenship. One could not know him without appreciating and being influenced by the strength of his character. And in his profession his

activities were not alone those incident to the teaching of law, but he felt himself concerned with every phase of the science of jurisprudence. He was an original investigator and a profound thinker, and while little of what he actually accomplished has been left in tangible monuments, his Preliminary Treatise on Evidence has already found its place among the classics of legal literature to demonstrate the value of the labors of a lifetime. His experience as a practising lawyer, an investigator and an author, his standing as one closely allied to the world of letters, and his activities as a man among men and a citizen profoundly interested in the affairs of his state and the nation helped to make him a great law teacher, but they also made of him one of the strong men of his period. It was not yet time for him to lay down his work. There were yet other classes to benefit by the guidance of his wisdom. This Association still needed his counsels. The American Bar Association, of which he was an honored ex-President, will greatly miss him at its annual meetings. Such men cannot well be spared. Yet there is nothing left to us but to cherish his memory and try as best we may to carry on the various works in which he took so helpful an interest.

The Association of American Law Schools is still in the formative period of its existence, and it is proper that we consider in a tentative way what it stands for and what it may accomplish. If there may be those who conceive it to have been formed with the purpose of fortifying the schools which require that their graduates shall be men of liberal education and a broad knowledge of the general principles of the law, as against the possible inroads of schools which do not find it expedient to insist on preparation of that kind for the practice of the profession, but prefer to encourage what may be roughly designated as the merely technical or so-called practical training, I am sure that they must ultimately find themselves to be mistaken, for no organization would be effectual, or even helpful, in such a possible contest. There must be many avenues through which admittance to the bar may be attained, and no

association can pretend to control them. But the legitimate object, and, I feel sure, the only purpose embodied in this Association by its founders, is to enable those schools which have similar general conceptions of the object to be attained and the best means of attaining it, to assist each other with a view to mutual improvement.

The American Bar Association, from the beginning of its existence, has constantly striven for the promotion of legal education of the broadest and most liberal character as one of its prominent objects, and with the desire of furthering that end it has organized its Section on Legal Education. But it is evident that the Association as such must look primarily to the result to be attained, and can give but secondary attention to the consideration of means and methods. It is rational, therefore, that institutions whose primary interests must be in determining the means and providing the methods through which the ultimate result can be most successfully reached, shall have some matters for consideration which cannot very well be brought within the proper scope of the work of the Educational Section. We are all of us lawyers, and therefore have a common interest with the other members of the Bar Association in its ultimate aims and purposes. As legal educators we take an especial interest in the work of the Section of Legal Education, but as instructors in law schools we want to consider some matters of detail which are not likely to arouse the special interest, nor to be particularly discussed by lawyers who have not been directly concerned in the work of teaching law. And I beg, therefore, to call your attention for a few moments to some of those matters which properly concern us in this Law School Association.

Institutions of higher general education have come to a quite substantial agreement as to the groups of subjects to be included in a college curriculum and the general order of their presentation. But, until recently, there has been no such agreement among law schools as to the order of presentation of subjects, or indeed, as to what subjects should be included

and what excluded in a law course. The order of topics, and the time to be given to each, has depended largely on the judgment, taste or even personal convenience of the individual instructors. Whether "Contracts" shall include only a categorical presentation of a few elementary conceptions, or shall extend as a connected course through one or two years of the curriculum, covering many collaterally related subjects; whether "Agency" shall be a mere sub-division of the subject of "Personal Relations," or a branch of "Contracts," or shall be coupled with the doctrine of "Master and Servant," so as to cover a great field, has apparently been a problem solved by the merest chance of accidental circumstances. Whether "Sales" shall be taught as a branch of "Contracts" or as a branch of the law of "Property," or as a part of the "Commercial Law," has depended apparently upon the whim of the man to whom the subject has been assigned, or of some other man who, having a subject to which it might be deemed allied, has elected to include it, or exclude it, as his personal convenience might dictate. Questions like these are still to be worked out, for although some approach to uniformity in the cataloguing of subjects of a law course has been attained, the uniformity is yet superficial rather than substantial. There must be in the nature of things some arrangement and relation and proportion which may be devised and substantially agreed upon, and which shall constitute an improvement for many schools over the existing curricula, and it is a proper function of this Association to endeavor by consideration and discussion to attain as to these matters the best practicable standard.

In the solution of this question it will be proper to discuss how far subjects which are usually treated as properly in a curriculum of general education may also be considered as part of a law course. There is a tendency, not properly to be criticized, to shorten the combined college and law courses by giving credit in each for such work as can be treated as in any way common to the two; but from the point of view of

law teachers we should, I think, discourage any combination which shortens the period of distinctive legal study—that is, study according to the law school methods—or abridge the time actually given to the subjects properly included in a distinctive law course. It is highly desirable that the lawyer be instructed in logic, history, social science, administrative law and the law of nations, but knowledge of these things will not take the place of contracts, torts, real property and pleading in preparation for practice. The lawyer should know about them because he should be a liberally educated man, but no amount of liberal education will be a substitute for a knowledge of the principles of the law or the discipline resulting from the study of those principles in a thorough and methodical way.

While it is not for this Association to say what should be the nature and extent of preliminary studies for admission to the profession, for law schools fortunately are not charged with the determination of those questions, yet it is for law schools to say what a law degree shall mean, not only as to actual attainments, but also as to the training in legal methods which graduation shall signify. Law teachers well know that one man may in six months get a knowledge of the principles of the law, so far as a mere knowledge goes, superior to that which another equally faithful student can attain in two years, and yet it is also well known that the six months' student has not the maturity of legal judgment which a longer training would have given him, and that in all probability the man who has required two years for the acquisition of his knowledge is in the end better skilled in the law than the man who has been able by reason of extraordinary facility to complete a curriculum of studies in a much shorter time. It is for the law schools, then, as it seems to me, to consider together the length of time during which a student shall be subjected to the requirements of law school study before he shall be allowed to take the law degree. The Bar Association has helped the law schools to establish some measure of uniformity in the require-

ments with reference to length of time of studying for admission to the bar. It is now for law schools to go further and see to it that a law degree stands for a substantial period of actual law school work. The question is not whether in some exceptional case one may not become eventually a good lawyer with but a short period of law school education. The question, on the other hand, is whether the law schools shall indicate by their requirements of a substantial period of law school study their sincere belief that this kind of preparation is superior to any other as fitting for the work of the profession, or whether they shall, by permitting a substitution of office study as a part of the law course, advise those who contemplate a study of law that they consider other methods substantially equivalent. I think we can agree that the student who pursues his course in an office or by private reading does so to his disadvantage, and that whatever may be his individual success in the profession, his law training acquired in these methods is less thorough and less efficient as to the man himself than the regular work of a law school. If we are sincere in this belief then we ought not to hesitate to say that a law degree shall stand as a representative of success in a substantial period of law school study, and refuse to allow that substantial period, whatever it may be, to be abridged by other less satisfactory preparation.

We need to give attention also, and very careful attention, to the means which are adopted for determining whether during the period of law school study the student pursues his preparation with the thoroughness and application necessary to give discipline as well as attainment, and whether, at the end of his course, he has achieved the discipline and attainments which ought to be represented by a law degree. The matter of preliminary and final examinations, therefore, might very well receive careful and protracted attention in this Law School Association. In this matter there is, however, the greatest discrepancy. In one school categorical questions are asked, such as this: "Define a contract?" "What is a consideration?" "What is a contract under seal?" "What is a

contract of record?" "What is an executed, and what an executory, contract?" Such questions can be answered categorically and unimpeachably as the result of close application to any of the numerous quiz books which are offered as furnishing means for passing examinations on short notice. On the other hand, hypothetical questions which involve some discrimination and intelligent judgment may be so uncertain as to leave it open to the ingenious student to make a broad guess without disclosing the possession or want of accurate knowledge, or so specific as to touch only a very narrow and technical case. How to call for knowledge which should be acquired by the exercise of the reasoning powers, and at the same time avoid any encouragement to the repetition from memory of some particular passage in a text-book or the student's notes of what his own instructor has said, is a problem which law school teachers may well discuss.

I have suggested intermediate and final examinations, but I should prefer to be more explicit and say preliminary, intermediate and final examinations. The test as to fitness by way of general education should be applied at the beginning. It is more important that the student be required to show mental discipline, such as comes from pursuing a regular course of general study, at his entrance upon a law school, than that he show, at the time of completion of such law course, that he knows a given amount of algebra, Latin and physiology. Once entered upon a law course, let him forget everything else, if he will, and never be called to account therefor again, but let him not enter upon the law course until the discipline of mind and capacity which a general education gives have fitted him for professional studies.

Intermediate examinations will be valuable in bringing to the student's mind the seriousness of his undertaking, in giving him a better conception of what he is expected to do, and in affording collectively a better test of what is really accomplished than can be afforded by a final examination, however thorough. What a student knows at the end of his course will

hardly exceed the sum of what knowledge he has attained of the subjects which constitute the parts of his course, but the aggregate of his real attainments may be greater than he can show in one final test.

If we can achieve some substantial harmony as to the subjects to be included, their relative importance, and the order of their presentation, and also the methods by which the student's attainments may be fairly tested, then we may be able to profitably consider further the question of some interchange of credits among law schools. At present, interchange of credits is hardly feasible. A student in one school may have completed a course in real property in six weeks, while in another, which he desires to enter with advanced standing, real property represents a half, or even the whole of a year's work during one hour a day of recitations. It plainly will not do to give such a student credit in the latter school for the completion of real property and excuse him from further examination on that subject. And so it is as to any of the other subjects of the law course. And yet it does seem reasonable and desirable that a student who has pursued a portion of a course of study in one school shall be allowed, if he chooses, to enter another school with something to his credit for work which he has already done. Such interchange is recognized in institutions of general education, and it ought to be even more available in institutions giving instruction in law alone. But until there is some substantial agreement as to at least the subjects of the first year of law school study, and some harmony in methods which shall secure substantially equivalent examination tests, no interchange of credits will be practicable. An interchange of credits will presuppose a number of schools having substantially the same grade of requirements, the same thoroughness and the same term of law school work as a condition of graduation. But if substantial agreement in these respects could be brought about, then I see no reason why, to some extent, credit in one school may not be given for work completed in another. No doubt

Each school will feel that its graduates should represent to a substantial degree its peculiar characteristics and influence, but it will hardly be contended that no one can properly be a graduate of any particular school unless his entire education has been pursued in that school.

At any rate, these are things worth considering, and in the consideration of them much benefit will be derived from mutual discussion. The way is open to us, if we see fit to be helpful to each other in the effort to do the best which each school can do in promoting the right kind of preparation for the practice of law.

It would be unwise, as it seems to me, to assume that all we can do is to fix some standard for determining what schools are reasonably entitled to membership in this Association. That has been a preliminary necessity, but the real work of the Association, if it vindicates its organization and continued existence, will be found to lie in the substantial betterment of the work of the schools represented, a betterment not enuring alone to the schools as such, but also to the benefit of those who receive their education in them.

THE FIRST YEAR CURRICULUM OF LAW SCHOOLS.

BY

JOSEPH H. BEALE, JR.,

OF HARVARD AND CHICAGO UNIVERSITY LAW SCHOOLS.

In this paper I shall discuss the best curriculum for the first year's work in law schools which have a three year course. In the investigation of actual work done in the schools I have examined the curriculum of thirty-two three-year schools, almost all of which are members of this Association.

At the beginning of the study of law two things are to be considered: First, the fitness of the student to pursue a certain course of study, and second, the relation of this course at this period to the rest of his legal education. He can pursue no course which is merely a specialized branch of a more general subject not yet learned, nor one which has to do with the application in practice of principles with which he is not familiar, nor one which deals with facts too complex for his present knowledge. In short, the studies at the beginning must be fundamental and simple. In the second place he must study as soon as possible such courses as are conditions precedent to his further work. He must, for instance, learn the principles of the law of contract before he can deal with Sales and Insurance or Partnership. It is not difficult to determine what is fundamental law. Civil rights are based ultimately upon rights of property and upon obligations, whether *ex contractu* or *ex delicto*, and the study of law must begin with the simplest and most general forms of such rights. We should start, therefore, with courses upon Contracts, Torts and Property. They are simple and fundamental, and they form a necessary preparation for the study of more highly specialized branches of law. Criminal Law is equally simple and

fundamental, being the basis of all public obligation. It is not so essential a preparation for subsequent study as the first three named and could be postponed better than they ; but the simplicity of the facts with which it deals and the neatness and subtlety of much of the reasoning involved will fit it for study by a beginner. Pleading, the body of principles and rules in accordance with which these simple rights are prepared for presentation to the court, is clearly fundamental, and an investigation of the rules of pleading throws much light on the problems which arise in the other courses. There is, therefore, good reason for the adoption of these five subjects as the basis of first year instruction.

Most other courses offered in law schools are theoretically not so well adapted to study in the first year. They are either specialized branches of the general subjects, like Partnership, or Insurance, or Corporations, or Sales, or they are supplementary to them like Equity, or they are derived from other systems of law, like Bills and Notes. There are, however, a few general and fundamental branches of law not yet named. They are Persons, Agency, Damages, Evidence and the Conflict of Laws. The last of these may at once be dismissed, as it is too difficult and requires too great a knowledge of other topics to be valuable as a study in the first year. Evidence also, it would seem, requires a broad acquaintance with many topics of the law for its profitable study. Agency, Damages and Persons remain as available and fitted for first year work ; but they differ from the five subjects first considered in that the knowledge of them is not so essential for the understanding of other topics. The subject of Sales deserves consideration also, for, though a sale is a specialized form of contract and has results which concern the law of property, yet the subject is so simple and important as not to be theoretically out of place in the first year course.

Such are the considerations which might bear on the selection of a first year curriculum ; but the law is rather practical than theoretical, and one should hesitate to arrange a course of

study upon solely speculative reasoning. Let us see if there is a practical test to apply. Our law was not bought ready made in various parcels, labeled "Contracts," "Equity" and "Partnership;" it has grown with the growth of civilization and has become more complex and specialized with the growing complexity of life. If we look, therefore, to those principles of law which were earliest investigated and established, we shall find them to be the fundamental principles out of which the whole law has been developed, and the ones, therefore, which should be mastered before those of later growth are studied, and we shall then have sufficient preparation for comprehending the later developed topics which grew out of them. If we look into Glanville or Bracton we shall find them dealing with the law of Property, with Contracts and Torts, with Criminal Law, with Procedure, and with nothing else; no commercial law, no equity, no law of marriage or of inheritance, no agency, no law of persons except the obsolete title of outlawry. These five branches of law were first developed. The law of Damages, of Persons, of Evidence and of Agency seems next to have taken shape in the common-law courts, while Equity, under the first lay chancellors, was beginning to take on the characteristics of true law; no other titles can be said to have a past reaching back to 1600. We therefore find by this line of investigation also that Contracts, Torts, Property, Criminal Law and Pleading are the foundation of our law, and should form the principal part of a first year curriculum; that Agency, Persons and Damages were developed early, and might be studied at once after the other five; and that other branches of law are of later development, and should, presumably, be pursued later in the course.

Let us now turn to the actual curriculum of the best law schools of the present day, for these schools have worked out a course of study as a result of long experience. Fifty years ago the curriculum of the existing schools began anywhere and ended in the same place. One study was as good as another to begin the course or to end it, for all were created equal. In

the fifty years that have elapsed the schools have arrived at certain conclusions as to the topics with which it is proper to begin and in a general way as to the best sequence throughout the course.

The schools which teach law by the inductive method are in close agreement as to subjects for study in the first year. They teach Contracts, Torts, Property, Criminal Law and Pleading. From this rule there is almost no variation. The two California schools, to be sure, omit Pleading, but these are the only omissions from the five subjects in the schools of this class. A few of them require additional studies in the first year; thus four have Persons, three Agency, three Equity, and one each Sales, Carriers and Constitutional Law; but the five subjects first named remain the characteristic ones.

Schools which teach law by the deductive method fall into two classes, of which one might take the schools of the University of Michigan and of Wisconsin respectively as types. Schools of the Michigan type omit one or two of the five subjects characteristic of the inductive schools; the omissions, in almost every case, being Pleading or Property. They require Elementary Law, which, with them, means a study of Blackstone's Commentaries, and they add also a group of topics, consisting of Domestic Relations, Agency and Sales. There are, of course, some variations among the nine schools of this type which I have examined, but the differences are extremely slight. Schools of the Wisconsin type also omit one or two of the five subjects characteristic of the inductive schools, usually Property or Torts. They all teach Elementary Law from Robinson's or Bryant's book. They require the same group of additional subjects as are found in the Michigan type, namely, Domestic Relations, Sales and Agency; and they have added also another group of topics, consisting of Carriers and Partnership. There are several variations in the seven schools of this type, but these variations are merely in detail. Two or three of the thirty-two schools, including Yale, appear

to have arranged an entirely independent curriculum, and not to conform to that of any other school.

The present curriculums of three-year law schools then appear most commonly to be selected from Contracts, Criminal Law, Torts, Elementary Law, Property, Pleading, Domestic Relations, Agency and Sales, the subjects being preferred in the order named.

Let us now take up more in detail the separate courses which require consideration; see how far they answer the theoretical requirements, and to what extent they now form part of the first-year curriculum of the schools examined.

Contracts is in the first-year curriculum of every school examined, and it is obviously a proper course, fully answering every requirement.

Torts is offered in all schools examined except four, and it also is a fundamental, and it would almost seem a necessary, course for the first year.

Criminal Law is taught in the first year in all schools but two. We have seen that this is theoretically a fit subject; and, while it should not be preferred to Property or Pleading, no other course has a better claim for a place in the first year.

Eleven of the schools examined do not teach real property in the first year. Several of these schools present a short course in personal property. Real property, however, was the sort first known to the law, and a knowledge of its principles seems necessary for a proper study of most other topics. This, then, should certainly form part of the curriculum.

Twelve of the thirty-two schools omit Pleading in their first year. It is, undoubtedly, a difficult and abstruse subject for a beginner, but there can be no doubt that it must be mastered before the student can thoroughly understand the law of Contract and of Torts. Both these branches were very largely developed through pleadings; and, indeed, Glanville's Treatise, the beginning of the theoretical study of our law, is entirely based upon forms of Pleading. If a student, therefore, is to

master the law, his study of the principles of Pleading must begin early.

Persons, or more commonly a part of it under the title Domestic Relations, is in the first-year curriculum of twenty schools, the same number that have Pleading. If it does not include the Law of Marriage, it is a tolerably simple and early-developed common-law topic, well within the power of a beginner. It is, however, one of those subjects which a student would learn incidentally in connection with the study of other branches of the law. Its most important title, the law of married woman, is now almost entirely statutory; and the statutes differ so widely in different jurisdictions that to make a detailed study of the law of any one state is almost a waste of time, except for a student who is to practice in that state. Unless, therefore, in a school which draws its membership from a single state, Persons would better be an elective subject, as it is at Columbia, if it is to be open at all to students in the first year.

Seventeen schools, a bare majority, offer Agency in the first year, and it has undoubted claims to a position in the curriculum. It is a simple subject, and its principles are constantly involved in the consideration of most legal questions. It is an almost necessary prerequisite of the study of Partnership and of Corporations. An investigation of its principles also throws light on questions of causation and responsibility. On the other hand a considerable knowledge of the law of Contract and of Torts and some familiarity with methods of legal reasoning seem to be necessary for its profitable study. It is then an excellent subject for the first year, if it can be begun not earlier than the middle of that year; and in schools in which the courses do not continue throughout the year it should, if possible, find place in the last half of the first-year curriculum.

Damages is not taught in the first year of any school, but, it seems to me, after the five principal subjects, to be best adapted for first-year study. In my experience I have found it to throw more light upon questions of responsibility and of causa-

tion than any other in the curriculum. It tends to make clear the difference between law and equity, and it broadens one's view of the nature of legal rights. It must be studied, however, with a good knowledge of Contracts, Torts and Property, but so studied it enables the student to investigate obligations from a new point of view. Like Agency, it cannot properly be taken up before the middle of the first year.

Ten schools offer Sales in the first year. As I have already said, it is a useful and proper course, provided the study of it can be taken up after the completion of the course on Contracts. It does not seem to me, however, to be ordinarily as well adapted for first-year work as the eight subjects heretofore considered.

Evidence, Carriers, Equity and Commercial Law also occur in first-year curriculums, but none of them seems quite to belong there. Evidence requires too wide a knowledge of substantive law; Carriers is not sufficiently fundamental; Equity and Commercial Law would better wait until a more complete conception of the common law is attained.

Elementary Law is a favorite subject in the first year; it is offered by nineteen of the thirty-two schools as a regular course. And yet I believe the time devoted to it to be worse than wasted. What is gained by it? Certainly no knowledge of law upon which the student can rely. The information acquired, if any, is necessarily superficial and misleading. Broad rules laid down without the qualifications and nice shades of distinction which differentiate law from the moral precepts of the New England Primer, must either be absolutely dismissed from the mind or they will mislead the student to his harm; whence it would seem to follow that a school is estopped from putting them forth. Probably the object of such a course is not so much to impart definite information about law as to give a general notion of the nature of law, its scope and classification, and, perhaps, to lay down a few general principles. But most teachers will agree with me that the study of classification and of general principles is the most difficult sort of study;

that it requires knowledge of particulars and training in the methods of thought pursued in the science involved. To ask a student of law at the outset of his course to understand the general principles of law is like asking a child to regulate his conduct in accordance with the eternal principles of the moral code. We are beginning at the wrong end. The study of general principles, to be of value, should come as the completion of the study of law, not as the beginning. The course may be designed simply to make the study of law easier by first explaining the novel terms and giving a notion in the beginning of the scope of the subject. But law must be learned through hard, honest work on the part of the student; he must make legal methods of thought his own by grappling with the difficulties and mastering them. No one can do this work for him, and the sooner he begins it for himself the better; and if he is not led to think the task beyond his powers, but is encouraged to go straight at the difficulties, he can always conquer them. The course in Elementary Law is an effort to do for the student a work that he must do for himself. If it makes any impression upon his mind, it is by getting him used to elementary methods of work in what should be a serious scientific study.

Having discussed the course of study let us next consider the number of hours to be given to lectures weekly. The number adopted in the schools examined varies from ten to fifteen a week; the commonest amount is ten hours, and the average in all the schools is twelve. We, of course, assume that the student is to devote to the study of law all his time not required for rest and recreation; and lectures are intended to furnish him material for work sufficient to occupy all his time. It must be clear that the amount of time devoted to study is not directly affected by a change in the number of hours of lecture; lectures enough must be given to keep the student busy, and not so many that he will be unable to master the topics presented to him. Assuming that he is earnestly determined to learn, if he has too few lectures, he will over-

elaborate and devote his time to comparatively useless and trifling details; if he has too many lectures, his work will be necessarily superficial. The best opinion seems to indicate as the proper mean, from ten to fourteen hours; and perhaps the safest conclusion is to adopt twelve hours as the amount of lecture work each week.

Shall this time be given to a single course of study at once, pursuing it alone until it is completed; or shall two courses be carried at once, or three, or five? On this point also the schools differ greatly. In some schools each course of study is continued throughout the year for a certain number of lectures each week. The student in that case pursues five or six studies simultaneously. He devotes to each course sufficient time to mature his knowledge of the subject by experience and reflection; and he is enabled to get a broader idea because of the comparison of principles involved in the different courses simultaneously pursued. On the other hand, it is impossible during the year to take up any subject, like Agency, which requires at the outset a knowledge of other branches of the law. Some schools, pursuing the opposite policy, put the student's whole time upon one or two subjects until they are finished, and then take up other subjects. If enough courses are pursued at one time to enable a student to draw analogies and compare principles, this plan has undeniable advantages.

Let us try to combine the merits of both systems by starting the year with three subjects, Contracts, Torts and Property; and, upon completing them, take up as the remaining subjects of our curriculum, Pleading, Criminal Law, Damages and Agency. As to the total number of lectures for each course, judging from experience and from the time actually allowed in the best schools, it seems that for a sufficiently thorough presentation of the subject, about 90 lectures should be devoted to Contracts, 70 each to Torts and Property, 50 or, if possible, 60 to Criminal Law, 50 each to Pleading and Agency, and 35 to Damages. If 12 lectures are delivered a week, this will

just fill out a year of 34 weeks, the length of term time exclusive of examination periods in most schools.

Our program would then be as follows:

Contracts, 4 hours a week for 22 weeks, 88 lectures; followed by Agency, 4 hours a week for 12 weeks, 48 lectures. Torts and Property, 4 hours each for half a year, 68 lectures each. Pleading and Criminal Law, each 3 hours for the last half year, 51 lectures each; and for the remaining 2 hours a week during the last half year, Damages, 34 lectures.

OBITUARIES.

DISTRICT OF COLUMBIA.

CALDERON CARLISLE.

Calderon Carlisle was born in the city of Washington on the 27th of February, 1852, being the third son of James Mandeville Carlisle. He was graduated in 1871 from St. John's College, Annapolis, Md. He studied law with his father, who was a distinguished lawyer, and also at the Law School of Columbian University. From the time of his admission to the bar, on May 10, 1876, he engaged actively in the practice of his profession, being associated with his father in many important cases, and early in his career devoted himself especially to international law. In 1877, when only twenty-five years of age, he was appointed Legal Adviser to the British Legation, which office he continued to hold until the time of his death, September 16, 1901.

In 1878 Mr. Carlisle was made counsel for Spain before the Mixed Commission, formed under the agreement of February 12, 1871, between Spain and the United States, and discharged his duties as such until the close of the Commission in 1883, when he received a decoration from the King of Spain in recognition of the services rendered by him before that body.

In October, 1890, Mr. Carlisle devised and recommended the application to the Supreme Court of the United States for the writ of prohibition to the District Court of Alaska in the case of the British sealer "W. P. Sayward," the case internationally known as the Behring Sea case. As counsel for the Dominion of Canada he argued, with Mr. Joseph H. Choate, of the New York Bar, who had been retained by his

advice, the motion for leave to file the application which was granted at the October Term, 1890 (138 U. S. 404), and also argued the case on the final hearing at the October Term, 1891 (143 U. S. 472).

Mr. Carlisle continued as the Legal Adviser of the Spanish Legation and during the insurrection in Cuba made two elaborate reports on the Neutrality Laws of the United States with special reference to the filibustering expeditions of the Cuban Insurgents from the United States to Cuba. These reports consist of two printed volumes and contain substantially everything bearing on the subject of the Neutrality Laws up to the time they were written.

In addition to the Legations of England and Spain, Mr. Carlisle was retained at different times by the Danish, Belgian, Swedish, German, Russian, Venezuelan, Italian and Colombian Legations.

In the general practice of the profession, Mr. Carlisle was very active and argued many important causes, among others that of *Patch vs. White* in the Supreme Court of the United States (117 U. S. 210), involving the question of extrinsic evidence to explain ambiguities in wills. Many years before Mr. Carlisle's admission to the bar, attempts had been made to secure relief in this case in various forms of proceedings without avail. He instituted ejectment proceedings, and the lower courts ruled against the admission of the extrinsic evidence. When the case reached the Supreme Court of the United States the rulings of the lower court were affirmed by a divided court, but on a reargument of the case before a full bench, the lower court was reversed by an opinion which attracted the attention of the profession throughout the country.

Mr. Carlisle was a linguist of great ability. He spoke with ease the French, Italian, Spanish and other languages, and was a man of wide general culture, of ready wit, of most generous disposition and courteous bearing.

GEORGIA.

FRANCIS DOWNING PEABODY.

Francis Downing Peabody was born November 20, 1854, in Summerville, Alabama. He died July 19, 1902, at the age of forty-seven. He was the youngest of nine children born to Charles A. and Frances Harriet (Williams) Peabody. His parents were both born in Connecticut and came to Georgia and settled in Columbus in 1833. Mr. Peabody was prepared for college by Professor Otis D. Smith. His attendance at school was irregular, and at fourteen he left school and went to work upon his father's farm, where he worked for three years. At the age of seventeen he rented the farm and stock for a year and conducted it in a most successful manner.

At the age of eighteen Mr. Peabody entered the State Agricultural and Mechanical School at Auburn, Alabama. The struggle of his life then began. He had been but poorly prepared in text-books, and during his four years on the farm he had lost much that he had learned. Notwithstanding the disadvantages under which he had labored, he graduated with first honor in 1876. He afterwards read law at Hopkinsville, Kentucky, where he was also engaged in teaching school, and was admitted to the bar in 1879. In June of that year he went to St. Louis and entered both the junior and senior classes of Washington University, and before the end of the term stood a successful examination in open court for admission to the St. Louis Bar.

Early in 1881 Mr. Peabody returned to Georgia and married Miss Myrtice Nelms, of Griffin, daughter of the late Judge William Nelms. He finally settled in Columbus, Georgia, where he soon gained a front rank at the bar, and for years before his death had been one of the most prominent and successful members of the Columbus Bar.

In 1895 Mr. Peabody was elected City Attorney of Columbus, an office which he filled with great credit for the succeed-

ing five years. He was elected a Trustee of the Columbus Public Schools in 1894, and in 1898 he was re-elected for five years. Always keenly interested in educational matters, he soon became one of the most valued members of the Board. He was ever alive to the educational interests of the city; in his death the School Board sustains a great loss. He served on important committees, of which his broad views, sound judgment and progressive spirit made him always a most useful member.

Mr. Peabody was a prominent member of the Georgia Bar Association. He was an Episcopalian and was prominent in the affairs of St. Mary's Chapel, of which he was a member. For years he had been an active and enthusiastic member of the Columbus Public Library, and worked faithfully for the upbuilding of that institution. He was a member of Mount Hermon Masonic Lodge at Columbus.

Mr. Peabody was very prominently identified with the movement to erect a Young Men's Christian Association building in Columbus. He was chairman of the Board of Trustees and of the building committee, and took an active part in the entire matter. Unfortunately death came before he could see a realization of his hopes.

He is survived by his wife, two brothers and two sisters.

MARYLAND.

JOHN H. MITCHELL.

John Hanson Mitchell, one of the most prominent lawyers of Southern Maryland, died at his home, "Hanson Hill," near La Plata, on November 12, 1901. He was born in Maryland on June 25, 1842, and was a son of General Walter Hanson Jenifer and Mary Ferguson Mitchell. He received his early education at Charlotte Hall School, in St. Mary's County, an old and well-established academy of learning in that part of the state.

He matriculated at Yale College in 1857 and was graduated there with honors in the Class of 1861. Soon afterwards he went to Europe and pursued the study of law at the University of Heidelberg. Upon his return to Maryland he studied law in Baltimore, where he was admitted to the bar in 1866. He began the practice of law in that city under promising auspices, but after his marriage, in October, 1870, to Eliza Trippe Campbell Jenifer, of Baltimore County, he returned to Charles County and continued to reside there and practice law in that and the adjoining counties until the time of his death, which occurred suddenly from heart disease.

Mr. Mitchell's legal training and learning were ample, but he was not distinguished so much in this way as by his varied learning and broad culture in philosophy, history and the literatures of several languages. Throughout his life he kept up his study of the Latin and Greek classics and was conversant with French and German literature as well. His books and the society of his family not only made him content to live in the quiet seclusion of a country home, but his temperament was such that he preferred that life to the strenuous tumult of cities. His natural abilities were of a high order and they had been carefully trained. In society he was a witty and agreeable companion, with a deportment of much dignity. He was self-possessed, ready and acute in the trial of cases, but he seemed to consider that to give all of his strength and time to the pursuit of professional success, with its fierce competition, was paying too high a price. He lived a useful, happy, blameless life, respected and admired throughout the community.

He was a member of the Board of School Commissioners for his county for a number of years and a vestryman of the Protestant Episcopal Church. He is survived by his wife and eight children.

DAVID WILLIAM SLOAN.

David William Sloan was born in Alleghany County, Maryland, at the little mining village of Pompey Smash, in 1850. He came of Scotch ancestry, both his father and mother having been born in Scotland. His people were sturdy, strong-minded and industrious. His father was attracted by the opportunities offered in the rapidly developing soft coal mining region of Western Maryland. He had twelve children, of whom David W., the subject of this sketch, was the second child and the oldest son. The life of the family was in no way different from that of people similarly employed in what was then a primitive community.

Judge Sloan was educated in the public schools and at Princeton College, where he was graduated in the class of 1873. He immediately began the study of law in the office of Lloyd Lowndes, afterwards governor of Maryland, and his lifelong friend. Upon his admission to the bar, he opened an office in Cumberland, and engaged in a general practice. His progress was rather steady than rapid, his perseverance and tenacity of purpose soon becoming apparent and bearing their usual fruit. With a large family connection, and a natural taste for human companionship, and a delight in social activity, it was natural that he should be drawn into politics. Always an ardent Republican, he was soon recognized as a political force in his party, and thenceforth, until he was elevated to the bench, he never failed to take an active part in campaigns, his influence gradually widening until he was recognized as a leader throughout the state. The only political offices he held were those of State's Attorney for Alleghany County, and Associate Judge of the Fourth Judicial Circuit, consisting of Alleghany, Washington and Garrett Counties. The State's Attorneyship he held for three terms of four years each, from 1879 to 1883, and from 1887 to 1895, the longest period it was ever held by one man. In Maryland the office of Attorney for the State, or Public Prosecutor, does not debar its holder from

private practice, and Judge Sloan continued to gain ground as a practitioner up to the time of his election as judge. It may be said, however, that his private practice was never as large or lucrative as he might easily have made it. Industrious, but not especially methodical, he delighted in the practice of the law, not as a means of making money, but rather as the opportunity for the exercise of his ability and the increasing of his power and influence in the community. Had he eschewed politics and devoted his entire time and attention to his profession, he would undoubtedly have been richer, but that he would have been a less useful citizen is equally clear. He never allowed his professional zeal to narrow his sympathy with other varieties of business and social activity. Intensely human in his sympathy, loving social life and the strife of politics as well as his profession, he expressed a part of his individuality along all these lines. He became, in consequence, a less erudite scholar, but a broader and more useful citizen.

Upon the death of the Hon. -Henry W. Hoffman he became the candidate of his party for the Associate Judgeship, and in November, 1895, he was elected, and took his seat upon the bench immediately. His great activity in politics previous to his election led to some misgivings as to his selection for such a position, but the very rapid and complete manner in which his conduct upon the bench dispelled these apprehensions and turned doubt into admiration was remarkable. His keen and thorough insight into motives and character, his thorough understanding of human nature and the heart of the masses, gained, or at least developed, in the school of politics, served him in good stead as a judge. Well versed in the principles of law, and with a legal equipment good but not extraordinary, he yet became an extraordinary judge, having in an unusual degree the faculty of seizing upon the central and pivotal point in a cause, whether of law or fact, and stripping it at once of all non-essentials. This was, perhaps, his distinguishing characteristic and his title to fame among the many able men who have filled his office.

Genial and kindly in manner, patient and forbearing, painstaking and justice-loving, his popularity with the bar was large.

In private life he was attractive and agreeable. Loving life as he found it, he was the centre of social life wherever he was and he had the faculty of making friends and of attaching them strongly to him. He was a member of the Presbyterian Church, a Mason, and a member of the Lodge of Elks. He died after a long illness, which he had borne with cheerfulness and resignation, on the 9th day of August, 1902, at his home in Cumberland, leaving a wife, who was Miss Mary Goode, of Kirkwood, Missouri, and four children.

MASSACHUSETTS.

JOHN DAVIS.

John Davis was born in Hubbardston, Massachusetts, March 4, 1831, and was the youngest son of Silas and Polly Pierce Davis. His mother died at his birth and his father only survived her a year. Very little is known of Mr. Davis' boyhood, but when twelve years of age he found a home in a family near Lowell, Massachusetts, where his love of books, his studious habits and his evident desire for an education met with sympathetic response, and he was enabled to enter Dartmouth College, where he was graduated in 1859, supporting himself by teaching and tutoring during his college course. He then commenced the study of the law in Lowell, taught for one year as principal of the High School in Quincy, Massachusetts, and was admitted to the bar in 1863. He commenced practice in Lowell and continued in active practice there until death came suddenly to him in his office while in consultation with a client, March 11, 1902. Mr. Davis' early training enabled him to bring to the practice of his profession an indefatigable industry, and his close attention to business, his courteous manner and sympathetic nature secured for him

a large and lucrative practice. For many years he had the largest probate practice of any lawyer in his part of the state. He never sought and seldom held public office, although his interest in educational matters induced him to serve several terms as a member of the Lowell School Committee, and he was for several years a Special Justice of the local court. He held many positions of trust and responsibility in the business world and was president of the Old Lowell National Bank and a director of other banks and corporations. He was the trustee of many estates and faithfully discharged his trusts and his duties to his clients. He was a member of the Eliot Congregational Church of Lowell and for many years conducted a Bible Class in the Sunday-School of that church. He always kept up the study of the classics and was a biblical scholar of recognized ability.

He was married late in life to Miss Elizabeth S. Stearns, a lady of exceptional culture and refinement, whose tastes were in perfect accord with his own. Her death was a blow from which he never recovered and the two years during which he survived her left the daily impress of their grief upon him. He had no children or near relatives, and he left his large estate by will to the Lowell City Library.

This brief tribute to Mr. Davis, who had been a member of this Association for many years, cannot show the many-sided character of this kindly gentleman; he always lived up to his high ideals of his profession, was ever courteous and fair with his brethren of the bar, was always conscious of his duties and responsibilities in his dealings with court and clients, and was a charitable and public-spirited citizen.

The resolutions presented to the Superior Court by the Middlesex Bar, at services held in his memory, say of him: "If a man's ability is to be measured by the difficulties he has encountered and overcome, or by the advancement and progress he has made from the beginning to the close of his independent life, then certainly we must accord to our deceased brother Davis the possession of no mean abilities. If a man

is to be honored in proportion to the benefits which he has conferred upon his fellow-citizens, then any tribute which we can here pay to his memory will be inadequate to express the obligations which the citizens of Lowell owe to him. If the crowning glory of a man's life is the exemplification of the Christian virtues—truth, honesty, charity, kindness and love, of faith in God and faith in man—then was his life glorious.”

FREDERICK F. HASKELL.

Frederick F. Haskell was born in Chelsea, Massachusetts, August 14, 1872, and died in Boston July 6, 1902.

The untiring energy and capacity for hard work which marked his too short career were early developments of his character. Thrown upon his own resources before he had completed his common school course, he found time to attend the evening classes of the Young Men's Christian Association in Chelsea, and afterwards to take a course in a commercial college in Boston. Otherwise self-taught, he was yet a man of genuine culture and wide reading.

His ambition was always for the law, which he began to study in the office of Mr. Batchelder, of Portsmouth, New Hampshire. Before reaching his majority he went to Chamberlain, South Dakota, where he continued his studies in the office of Mr. King.

He was admitted to practice in the Supreme Court of South Dakota in 1894 and to the United States Court for the District of South Dakota in 1895, being the youngest of fifty successful candidates.

After two or three years of struggle in the vicinity of Pierre, South Dakota, he returned to Boston, was admitted to the Middlesex Bar, and later became associated with Hon. Robert O. Harris, then District-Attorney of Norfolk and Plymouth counties. It was in Boston that the long struggle with hardship and poverty came to an end. After the passage of the Bankruptcy Law of 1898 he made a specialty of bank-

ruptcy cases and soon took a front rank among the practitioners in that branch. He enjoyed the fullest confidence of the bankruptcy courts. He had, besides, an extensive general practice in all the courts. As an advocate he was aggressive, forceful and tenacious.

He was a member of the American Bar Association, the Middlesex Bar Association, the Exchange Club, the Middlesex Club, the Paul Revere Masonic Lodge and of the First Congregational Church of Watertown.

He was married in 1901 to Mabel A. Sumner, of Boston, who, with his mother, Mrs. Freeman Haskell, of Chelsea, survives him.

Mr. Haskell was one of the most agreeable and companionable of men. Large in body and mind, his hand and heart were always open. Strong, bold and impulsive, he was patient, generous and sympathetic with the weak, the halting and the timid. He was a loyal friend and a forgiving foe. A free-handed giver, he asked nothing in return. Ambitious for himself, he gloried in furthering the ambitions of others. His death was untimely and sad, "for he was likely, had he been put on, to have proved most royally."

JAMES BRADLEY THAYER.

James Bradley Thayer died at his home at Cambridge on February 14, 1902, at the age of seventy-one.

He was born in Haverhill, Massachusetts, and was graduated at Harvard College, in 1852, and at the Harvard Law School, in 1856, in which year he was admitted to the Massachusetts Bar.

Meanwhile he had appeared in print, in a sketch of Fisher Ames, published in 1854, in the "Homes of American Statesmen," and as one of the authors of a bright, but short-lived, little periodical called "To-day."

Commencing practice in Boston, he soon became actively engaged at the bar, and in 1864 was appointed a Master in Chancery.

He had always taken a deep interest in the political conditions of the country, and especially in those incident to the relations of North and South as affected by the institution of slavery. He was an early admirer of Charles Sumner, and had close affiliations with the set of literary-politicians in which James Russell Lowell and Edward L. Pierce were shining lights. Emerson was one of his heroes, and in 1884 he published an appreciative sketch of his sayings and doings in a journey to the West, in which they had been fellow-travelers.

Early in the seventies he was offered and declined a chair of English literature at Harvard. He afterwards accepted a chair in the Harvard Law School, where he was at first the "Royall" and afterwards the "Weld" Professor.

Upon this position he entered in 1874. He had a well-trained mind, a clear style of expression, a discriminating faculty and was a good judge of men. His legal education had been enriched by eighteen busy years of practical experience. It was a good storehouse from which to draw, and he was soon recognized as a successful teacher.

His literary tastes he could now gratify to an extent denied to those engaged in the active practice of his profession. His studies were thorough, and the results showed themselves outside of the classroom in his contributions, from time to time, to the Harvard Law Review, and more conspicuously when he published his *Cases on Evidence* in 1892.

He had, for many years, intended to do for his generation what Greenleaf did for his, and write a general treatise on the Law of Evidence. To such a task he would have brought a profounder and more philosophic scholarship than that which belonged to his predecessor, but it was a possession which finally prevented him from the attempt. He was not satisfied to take up the subject without resettling its foundations. Why was it that in Anglo-American jurisprudence, and in no other, there is such a thing as a "Law of Evidence," distinct from everything else with which a lawyer has to do? How could

it be accounted for by the legal historian? How far could it be justified as an aid in the practical administration of justice? How far can it really be said to exist at all? Some of these questions he had begun to answer in the Harvard Law Review as early as 1889, and in 1898 he combined and arranged his contributions to that periodical during several years on this general subject, publishing the results in "A Preliminary Treatise on Evidence at the Common Law." This volume was, as it styled itself, a preliminary study in its character, and it was his intention to follow it up by another, giving a compendious statement of what properly belongs to our Law of Evidence as it now exists. This he never found time to publish. His work in this field remains, therefore, incomplete, but, so far as it goes, it is that of a master.

In 1893 he published a work entitled "The Origin and Scope of the American Doctrine of Constitutional Law," and his "Cases on Constitutional Law" followed in 1894.

The latter collection is extensive, and, of course, well selected. Its main value, however, is to be found in his own *prolegomena* and notes. It was his aim to lead the student to a consideration of the causes of things and the circumstances out of which the leading decisions given by him grew and took shape. His subject naturally directed his attention particularly to the various determinations of the Supreme Court of the United States upon controverted questions of a public nature, and also to the manner in which the disputed terms, whose meaning they have been called upon to declare, came into the text of the Constitution. The character of the book is, therefore, largely historical.

The topic of Eminent Domain is treated with especial fullness and learning, in view of the fact that the rule of making compensation for property taken was first elevated by our American Constitution from a mere moral precept to a moral precept with a legal sanction.

Professor Thayer endeared himself to his classes and his friends, not simply by his intellectual attainments, but by his

genial qualities of companionship. Many will recollect the felicitous manner in which he presided over the annual dinner at the Boston meeting of this Association, and all who came into closer contact with him strongly felt his personal charm of manner and address.

He was offered a position on the Philippine Commission in 1900 by President McKinley, which he declined. In the same year he was elected the first President of the Association of American Law Schools.

On February 4, 1901, his was one of the many voices raised in commemoration of the judicial career of Chief Justice Marshall, and his address grew into a volume, published in the "Riverside Biographical Series" under the name of "John Marshall."

He received the degree of LL.D. from the University of Iowa in 1891, Harvard in 1894, Yale in 1901. He was a Fellow of the American Academy of Arts and Science, a resident member of the Massachusetts Historical Society, and a Vice-President of the Colonial Society of Massachusetts.

For the last two or three years his health had not been perfect, but he met his class as usual until a day or two before his death. That was an euthanasia, coming in a moment, peacefully and painlessly, as he was taking his evening meal at home.

MELVILLE MOORE WESTON.

Melville Moore Weston, a prominent member of the Boston Bar, died suddenly of apoplexy on Christmas Day, 1901.

Mr. Weston was born in Bangor, Maine, August 11, 1848. His father, George Melville Weston, a lawyer, editor and writer of conspicuous ability, was a son of Nathan Weston, Chief Justice of the Supreme Court of Maine, and a grandson of Daniel Cony, Judge of Probate for Kennebec County, founder of the Cony Female Academy, in Augusta, and one of the original incorporators of Bowdoin College. Melville Wes-

ton Fuller, Chief Justice of the United States, and Mr. Weston were first cousins. The Chief Justice was named for his uncle, Mr. Weston's father, and studied law with him for a year in Bangor. Mr. Weston's mother, Bathsheba Hale Moore, was a direct descendant of the Captain John Moore who commanded a company in Stark's New Hampshire regiment at the battle of Bunker Hill and was promoted to be major for his services on that occasion.

Mr. Weston's boyhood was passed in Bangor and in Washington, D. C., where, during the Civil War, his father edited the leading Republican paper. He entered Harvard College in the fall of 1866 and was graduated with the class of 1870. In the fall of 1870 he entered the Harvard Law School, where Professor Langdell, the newly-appointed Dean of the Law Faculty, was introducing the system which has since made him famous—of dispensing with text-books and formal lectures and teaching law directly from the decided cases and the opinions of the judges. Here Mr. Weston spent two years, taking his degree of LL.B in 1872. After being graduated from the Law School he spent a year traveling in Europe, and on his return entered the office of Henry W. Paine and his brother-in-law, Robert D. Smith. He was admitted to the Suffolk Bar in December, 1873.

During the fifteen years from 1873 to 1888 Mr. Weston was closely associated with Mr. Smith, first as his student and then as his junior in the active court and consulting practice which the latter enjoyed. The Massachusetts reports for this period are full of cases in which they appeared together as counsel, and the cases which went to the full bench formed but a small part of the number which they prepared and tried together.

Thrown on his own resources by Mr. Smith's death in 1888, the wide practical experience which Mr. Weston had acquired, the habits he had formed of investigating with the utmost thoroughness every question of law or fact which arose in the matters entrusted to his charge, combined with an emi-

nently fair mind, a calm judicial temperament and a strong sense of humor, brought him a large and constantly increasing office business, and, incidentally, a fair amount of business in the courts.

His practice was at its height and his years of greatest usefulness and prosperity seemed to be just opening before him when, without premonition of any sort, he was stricken by the disease which caused his death. William W. Vaughan, Esq., of the Boston Bar and a classmate of Mr. Weston's in college, wrote of him the day after his death in words so well chosen that they should be preserved for a memorial:

"He was not merely a good lawyer, but a remarkably good lawyer. That his modesty and retiring temper hid this from the many is probably true, but it was well known to a devoted circle of clients and to many of his fellow-members of the bar. More than one lawyer has agreed fully with the opinion of the advocate who said that on a difficult point of law he would rather rely on Weston's deliberate opinion than on that of any lawyer he knew. The blood which made two Chief Justices was not idle in him, but kept him ever on that 'studious quest' which finally, and often to the student's own surprise, ends in making a learned man. Learned he unquestionably was, with a learning and a judicial capacity of weighing opposing arguments and decisions that made his friends regret that life had not called him to some of the judicial work which fell to others of his race. But his own modesty often stood in his way. It is not impossible that contact with his brilliant brother-in-law, whose ability was of that unusual kind which reaches genius, led so modest a mind to put, by contrast, too low an estimate upon his own talents. He knew so well that he could not equal the powers of his senior that, perhaps, he failed ever fully to appreciate his own. Be that as it may, he was that rare man whose abilities far exceeded his own belief, and in him has gone a learned lawyer, a true man and a warm-hearted friend."

On April 5, 1902, the Bar Association of the City of Boston held a meeting at which resolutions in his memory were

passed, and appreciative remarks were made by Moorfield Storey, H. W. Chaplin, William W. Vaughan, Thomas J. Gargan and others.

Mr. Weston was never married. After his brother-in-law's death in, 1888, he made his home with his sister, Mrs. Robert D. Smith, who survives him.

MICHIGAN.

JAMES HOWARD McMILLAN.

James Howard McMillan, second son of United States Senator James McMillan, was born in Detroit, Michigan, September 17, 1866. His mother's maiden name was Mary L. Wetmore, daughter of Amos K. Wetmore, of Utica, New York.

His primary education was in the public schools of his native city, with a special training under Thomas Pitkin and one year's training at the Michigan Military Academy.

At the age of seventeen he was taken abroad and given special advantages of travel in Europe for one year. Returning home he entered Yale College, from which he was graduated in 1888. He then spent one year in the law department of the same institution. He was a member of the D. K. E. and other college societies, was especially fond of athletic sports and a great favorite with his fellow-students.

On his return to Detroit he entered the well-known law offices of Pond, Wells & Angell, where he completed his law studies. He came to the bar in 1890. His brilliant attainments and able qualifications soon bespoke for him a place in the firm, and in 1892 the firm of Wells, Angell, Boynton & McMillan was formed, of which Mr. McMillan continued a member until his death. The firm having at its command an extensive clientage, Mr. McMillan was at once pressed into active service and displayed marked ability as a young lawyer.

In June, 1890, Mr. McMillan was married to Julia V. Lewis, daughter of Hon. Alexander Lewis, a prominent citizen and ex-Mayor of Detroit. Two children were born to them, a daughter, Gladys, and a son, James McMillan, 2d.

As a lawyer he was all that his age and experience would warrant, and, had he concentrated his entire time and talent on the practice of his profession, he could, and doubtless would, have become distinguished; but the law is a jealous profession and will not allow intermeddling with other pursuits. Mr. McMillan had bestowed upon him and placed under his executive care and management by his father large commercial and financial interests, and these commanded his attention and called forth energy and skill quite as much as the practice of his profession.

At an early age he was made a stockholder, director and vice-president of the Detroit and Cleveland Steam Navigation Company and later a stockholder in the Detroit and Buffalo line of steamers, and had other financial investments.

Mr. McMillan was schooled by his father to deal with large matters. His skill in this line was apparent as early as was his ability as a lawyer; and his legal training only the better qualified him to conduct successfully his large financial interests.

The call to arms with Spain appealed at once to Mr. McMillan's sense of duty as a citizen. He entered the volunteer service, was commissioned a captain and by Brigade Commander-General Henry M. Duffield was appointed quartermaster and was stationed at Camp Alger. His brigade was hurriedly ordered to Cuba. Captain McMillan had charge of the transportation, with scarcely any time for preparation. Inexperienced as he was, his work was marked with ability and dispatch.

At Siboney, acting as post quartermaster, he directed the relaying of railway tracks and opened up a means of rushing forward supplies. He established yellow fever camps on the mountains near Siboney and took other steps to relieve the

sick and suffering. He performed every duty imposed upon him with energy and painstaking care, and often exposed himself to hardships and dangers.

After the surrender he went to Santiago and became assistant to Colonel (now General) Humphrey, who was so pleased with his work that he suggested him as worthy of brevet rank.

Captain McMillan was a man of fine physique and apparently in perfect health. It was not until his return from Cuba that he showed any signs of physical weakness. He was attacked with malarial fever, which laid the foundation for pulmonary tuberculosis, which ultimately caused his death.

In his search of health, he sought the high altitude of the West. He spent much of his time at Colorado Springs and other health resorts, but all to no avail. On May 9, 1902, he succumbed to diseases found incurable, and, in his beautiful home which he had established at Colorado Springs, surrounded by his family and immediate relatives, he breathed his last. Thus passed away one of the brightest and most promising young men of Detroit—an able lawyer, a good business man, a noble citizen and a brave soldier. His kindness, courtesy and good fellowship, which endeared him to his companions, comrades and a host of friends, will never be forgotten.

Surviving him are his wife and daughter, the son, a mere child, having died at Colorado Springs but shortly before the father.

MISSOURI.

HENRY HITCHCOCK.

Henry Hitchcock, the twelfth President of the American Bar Association, came of a splendid family, the paternal branch having given a good account of itself from the earliest settlement of the country. The family had its American origin in New England, but its activities have found expression in all parts of the Union. Mr. Hitchcock's grandfather,

Samuel Hitchcock, was born at Brimfield, Massachusetts, in 1755, graduated at Harvard, was admitted to the bar at Worcester, Massachusetts, settled at Burlington, Vermont, in 1786, removed to Vergennes, Vermont, in 1794, returned to Burlington in 1806 and died there in 1813. He was a man of forceful character and marked individuality, was a leader of men, and gave his state most worthy service. He married, in 1789, Lucy Caroline Allen, second daughter of Gen. Ethan Allen, of Ticonderoga fame.

The third son, Samuel Hitchcock, was educated for the army, but resigned his commission, studied law and was admitted to the bar in St. Louis. He was a man of great learning, but retiring disposition and infirm health. He died at sea, of consumption, in 1845 or 1846, aged forty-four.

Judge Henry Hitchcock, the eldest son of Samuel, and the father of our subject, was born at Burlington, Vermont, in 1791, graduated from Vermont University about 1813, was admitted to the bar and moved to Alabama Territory in 1816. He was Secretary of Alabama Territory, Attorney-General of Alabama State and United States District Attorney; in 1835 he was appointed Chief Justice of Alabama, resigning in 1837; he died August 11, 1839, at Mobile, of yellow fever. He was a man of the highest character, influence and reputation, universally honored and beloved, and his death was lamented in Mobile and throughout Alabama as a public calamity. In October, 1821, he married Anne Erwin, daughter of Col. Andrew Erwin. Colonel Erwin came to this country from the North of Ireland; he was at one time a prominent and successful merchant in Augusta, Georgia; afterward he lived in Buncombe County, North Carolina, and emigrated thence, about 1811-12, to Bedford County, Tennessee, accompanied by a large number of his neighbors, among whom he was the leading spirit. Until his death he cultivated a large farm about ten miles from Shelbyville, Tennessee, on which he built what was for many years known throughout all that country as "The Brick House," known far and wide for its hospitality.

Henry Hitchcock, the subject of this memoir, the second son of Judge Henry Hitchcock and Anne Erwin, his wife, was born July 3, 1829, at Spring Hill, a summer settlement six miles from Mobile, Alabama, where his parents lived. In November, 1846, he was graduated from the University of Nashville, in which city his mother then lived. He then entered Yale College and was graduated in 1848, among the first seven students of his class. In July, 1848, the young collegian entered the office, in New York, of Hon. Willis Hall, the Corporation Counsel of the city. In November of the same year he accepted a position as Assistant Classical Teacher of the High School at Worcester, Massachusetts, a position which he held until November, 1849. In that month he returned to his home in Tennessee and shortly thereafter entered the office of Hon. William F. Cooper, then a prominent member of the Nashville Bar, and afterward eminent as Chancellor and Judge of the Supreme Court of Tennessee.

On September 22, 1851, the young legal aspirant arrived in St. Louis. In October, 1851, he passed his examination before the Hon. Hamilton R. Gamble, Chief Justice of the Supreme Court of Missouri, and opened an office. From January 1, 1852, to January 1, 1853, he served as Assistant Editor of the *St. Louis Intelligencer*, a Whig paper, which, in June of that year, he represented at the Whig National Convention, at Baltimore, which nominated General Scott for the Presidency. After a year's service he found his editorial work inconsistent with his legal duties and resigned. At first, as is usual with beginners, he found law practice slow, but he redoubled his study of legal principles and was not discouraged. At the March term, 1854, he made his first appearance before the Supreme Court of Missouri, and after that clients were more numerous. In the next ten years he appeared in fourteen cases before the Supreme Court—a fair record for a young lawyer. Throughout his legal career, Mr. Hitchcock declined criminal practice, preferring the civil branch, and devoting himself especially to equity and commercial law.

He never sought political office, but was always deeply interested in public affairs. Brought up a Whig, pursuant to family traditions and associations, confirmed by reflection in early manhood, he was a devoted admirer of Henry Clay, but observation of slavery during boyhood, even in its more humane surroundings in Tennessee, implanted in him strong convictions of its evils and dangers, and, in 1858, having closely followed Mr. Lincoln's debate with Douglas on the Kansas-Nebraska question, he became an avowed Republican and always thereafter belonged to that party, though not always approving the views and actions of its more radical members.

Mr. Hitchcock always had the courage of his convictions, and once convinced that slavery and secession were wrong, he embarked in the cause against them with all his energy. It thus transpired, in the stormy events that followed, that he, as much as any other man in the commonwealth, was instrumental in retaining Missouri to the Union. The record of his experiences and his connection with the events of those times comprise incidents and occurrences of the highest historical value, but, within the limits of a short sketch, it will be possible only to summarize this part of his career.

In February, 1861, he was one of the fifteen delegates which comprised the "Unconditional Union Ticket," and which was elected to represent St. Louis in the convention which met the same month at Jefferson City "to consider the relation of Missouri to the Union." He was one of five Republicans on that ticket; the others were James O. Broadhead, Hudson E. Bridge, Isidor Bush and John How. One other Republican—Charles V. Eitzen, of Hermann—was elected to the convention, and these six, in a total of ninety-nine delegates, were the only representatives of the new party. As is well known, that celebrated convention met frequently during the ensuing two years, and in all its sessions, Mr. Hitchcock, in the prime of life, vigorous and enthusiastic for the Union, took a leading part. The convention was composed of the

ablest and most conservative men of Missouri, and they had before them a question of the gravest concern to the state: What attitude should Missouri assume in the conflict?

On March 13, 1861, Mr. Hitchcock made a speech in answer to Judge Redd, of Marion County, on the "Moss Amendment," which provided that while Missouri would take no part in making war against the general Government, she would not, on the other hand, furnish men or money to aid the Government in "coercing" a seceding state. The speech was a masterly one and covered the whole range of the subject of the Constitution and the relations of the states to each other and the central Government. The amendment was defeated by a vote of sixty-one to thirty, March 16, 1861. On the resolution providing that slavery should be permitted south of the Missouri Compromise line, while all territory north of that line should be forever free, the vote was ninety for to four against. Mr. Hitchcock was one of the four; his conscience permitted him to make no compromise with slavery. He was also one of the six who voted against the resolution that it was the sense of Missouri that the Federal Government should withdraw its troops from the forts of the seceding states. There were eighty-nine votes for the resolution.

Mr. Hitchcock was present at the next meeting of the convention, at Jefferson City, July 22, 1861, which declared the offices of Governor, Lieutenant-Governor and Secretary of State vacant and instituted a provisional government, with Governor Gamble at its head. On October 10, 1861, the convention assembled at St. Louis. At this meeting Mr. Hitchcock was a member of the committee of five charged with drafting ordinances organizing the militia of the state. On October 16th he made an elaborate speech in support of an ordinance postponing the election ordered for November, 1861.

The convention next sat, for twelve days, at Jefferson City, assembling June 2, 1862. Mr. Hitchcock served on the select Committee on Elections and Elective Franchise, assisted in the preparation of an ordinance prescribing a test oath, sup-

ported it in debate as protective, but not proscriptive or retrospective legislation, and also spoke on a variety of other subjects. At the next and final sitting of the convention, at Jefferson City, beginning June 15, 1863, and lasting fifteen days, Mr. Hitchcock was present at every meeting and took an active part in the proceedings. This session considered the question of emancipation, and, on June 26th, Mr. Hitchcock made an elaborate speech advocating emancipation—to become effective January 1, 1864. The convention, after long debate, passed an ordinance abolishing slavery in Missouri July 4, 1870, with various periods of apprenticeship, according to age.

On July 1, 1863, the convention adjourned *sine die*, having for two year exercised supreme legislative power throughout the state of Missouri as the immediate representative of the people. Its acts form a highly important and interesting part of the history of Missouri. Its members were elected on the eve of the Civil War, at a period of great popular excitement, and it was obliged to meet problems of public policy and duty the importance and difficulty of which can hardly be exaggerated. The expectation and scarcely disguised purpose of those who called it into existence were that it should enact an ordinance of secession, and the passage of the Convention Bill was resisted to the utmost by the Union men in the legislature of 1861. But not a single avowed secessionist was elected to it, no ordinance of secession nor any resolution or proposition to that end was ever offered, and the ordinances of July, 1861, deposing the then state government and state legislature and installing a provisional state government, were enacted by a clear majority of the members-elect. It was never a revolutionary body, but always conservative, steadfastly declining to legislate concerning matters of local or personal interest, or even upon matters of general concern, except so far as seemed absolutely necessary for opposing rebellion. It contained many of the ablest men of the state, and as to the rest was a thoroughly representative body. Mr. Hitchcock said of it: "Though I then thought, and still think, that its

action fell short of its opportunities, I do not believe that any legislative body ever met on American soil whose members, taken as a whole, more earnestly strove to do what, in their honest judgment, would promote the welfare of their people."

Mr. Hitchcock always deplored what he regarded as his mistake in not entering the volunteer service in 1861. That was his desire, but his friends insisted that his value to the cause would be greater as a member of the convention than in the field.

The convention having adjourned, Mr. Hitchcock felt that he could not remain contentedly at home, and, therefore, went to Washington, where he called on his uncle, Gen. Ethan Allen Hitchcock, then major-general of volunteers and very close to the President. On October 1, 1864, he was appointed assistant adjutant-general of volunteers, with the rank of major. He was assigned to duty on General Sherman's staff, at the latter's request. He arranged his business in St. Louis, left his legal affairs in the hands of his clerk, George W. Lubke, since judge of the St. Louis Circuit Court, reported to General Sherman at his headquarters, in Rome, Georgia, the last week in October, and was made a member of his personal staff. Though nominally an adjutant-general, Major Hitchcock, until the end of the war, saw that actual field service which he so much desired.

Honorably mustered out of service June 23, 1865, Major Hitchcock sailed in July for Europe and spent four months traveling through Great Britain, Ireland, France, Germany, Switzerland and Austria, meeting John Bright, Thomas Hughes, author of "Tom Brown at Rugby;" Professor Jowett, afterward Master of Balliol College and translator of Plato; Lyulph Stanley, a rising member of the Liberal Party; Edouard Laboulaye, the eminent French republican, and a number of others who sympathized with the Union in the war just closed. He returned to St. Louis, December, 1865, and resumed his practice, and in 1866 or 1867 took into partnership his former clerk, George W. Lubke, an association that

continued until ill health compelled Mr. Hitchcock's temporary retirement, in October, 1870. While he was in the army another state convention had been called, which passed an ordinance of immediate emancipation and adopted the noted "Drake Constitution."

Mr. Hitchcock is known as the "Father of the St. Louis Law School," and no more enduring monument could be erected to any man's fame than that.

In 1867 Mr. Hitchcock was admitted to the United States Supreme Court, where he appeared as associate counsel with Messrs. Glover and Shepley. In April, 1869, he was urged by Judge Treat and John R. Shepley to accept the appointment of United States Circuit Judge for the Eighth Circuit, but declined to consider the appointment owing to the wide extent of the circuit, which would have taken him away from home much of the time.

In 1870 Mr. Hitchcock's health failed from overwork. He spent the summer traveling on the Pacific Coast, but on attempting to resume work, in September, was threatened with passive congestion of the brain. He dissolved his law firm and spent some time in New York under the treatment of a noted physician, Dr. William A. Hammond. Receiving an invitation from his brother, Ethan Allen Hitchcock, the managing partner at that time of the American firm of Olyphant & Company at Hong Kong, China, Mr. Hitchcock went to Hong Kong in 1871, and, after remaining two months, returned home by way of Japan and San Francisco, reaching St. Louis greatly improved in health.

In 1872 he took in as law partners George W. Lubke and John Preston Player. In 1882 Mr. Lubke was elected judge of the St. Louis Circuit Court; soon after that Mr. Player died, and for the next two years Mr. Hitchcock practiced alone. April 1, 1884, he entered into a partnership agreement with Judge George A. Madill and Hon. Gustavus A. Finkelnburg, limited by its terms to a period of six years. April 1, 1890, the partnership expired and Mr. Hitchcock

and Mr. Finkelnburg continued practice together until July 1, 1891, since which date the former practiced alone.

In 1895 he received from Yale College the high distinction of a degree of LL.D. He died at his home in St. Louis on the 18th day of March, 1902.

GEORGE A. MADILL.

George A. Madill, of St. Louis, died on the 11th day of December, 1901. He was born at the town of Wysox, on the Upper Susquehanna, in Bradford County, Pennsylvania, on the 28th day of June, 1838.

He was graduated in 1858 from Union College, in Schenectady, New York, and immediately began the study of law at the Albany Law School. He was admitted to the bar of New York in 1860 and he began practice at Oswego. In 1866 he removed to St. Louis, where he continued to reside until his death. His ability, wit, industry and uprightness soon won for him the respect and esteem of his associates at the bar. So rapid was his progress that when, in 1870, a vacancy occurred in the Circuit Court of the city, he was selected at a general conference of lawyers as the man most worthy of the place. He was accordingly nominated, and, although he refused to take any part in the canvass, he defeated a candidate put up by the then dominant political party of the city. His conduct upon the bench satisfied the expectations of his friends. He was diligent, impartial, judicious and learned. Before the expiration of his term of office he had established a reputation which still survives among all classes of citizens, and had won the affection as well as the admiration of the bar. Notwithstanding the solicitation of the members of the bar he declined renomination.

The 30th day of December, 1874, on which day he occupied the bench for the last time, was made memorable by the formal presentation to him, immediately before the adjournment of the court, of an address signed by practically the

whole bar, the spirit and purpose of which appears from the following extract :

“ Knowing that you are about to retire from the position of Circuit Judge, which you have so long occupied, we are unwilling you should depart without some manifestation of our approval of your judicial career, which we now declare has been marked throughout by a dignified modesty, unquestioned impartiality, extensive learning and great ability ; and we bear witness that you have discharged the important, laborious and responsible duties of your high office in a manner beneficial to the jurisprudence of the state, with justice to all suitors, honor to your own head and heart and with kindness and courtesy to your professional brothers.”

In 1869 he became Professor of the Law of Real Property in the St. Louis Law School, and in 1885 Professor also of Equity. He continued to be an instructor for twenty-five years, and during the whole of that time refused any compensation for his services. Prior to his retirement he endowed both chairs and left to his successor ample compensation for services which he himself preferred to render gratuitously. Between 1874 and 1875 he was also actively engaged in practice, and, during the latter part of this period, was retained in every case of great importance pending before the courts. So great was his labor that his strength was unequal to the strain upon it, and in 1895 he left the bar and became President of the Union Trust Company in the hope that a less active life would re-establish his health. He was, however, disappointed in this expectation. The habit of hard work had become too firmly fixed and he carried into the business of the Trust Company the same laborious thoroughness which had characterized his professional service. His health again became impaired in 1900, and in the following year he died.

The meagre facts of Judge Madill's life do not suggest its real significance. As a lawyer, a judge, a teacher, a man of business and a citizen he exerted a profound and far-reaching influence upon the community in which he lived ; an influence

which has survived his death and will, for many years, tend to foster higher ideals among all classes of people. He gave a dignity and authority to the bench; influence and reputation to the bar; a zealous ambition and inspiration to the student. His opinions were sought and referred to upon all questions of public importance. He was at once kind and strong, learned and judicious, cautious and daring. His great resources were at the service of the most insignificant member of the bar. Widows and orphans were fully advised to their advantage; men of large affairs implicitly followed his instructions. His friends felt for him an affection so warm, so trustful, so abiding and so delightful that if character be measured by its influence upon others, Judge Madill must be recorded among the most admirable and lovable of men. He was a great lawyer and a most successful man of affairs.

NEW YORK.

WILLIAM ALLEN BUTLER.¹

William Allen Butler, the son of Benjamin Franklin Butler, Attorney-General of the United States, was born at Albany on February 20, 1825, and died at Yonkers on September 9, 1902. He was admitted to the bar in 1846, and his active professional career covered a period considerably longer than half a century.

Mr. Butler began the practice of the law with the advantage and the peril of a professional association with a great lawyer—his father, whose name and fame, as a lawgiver and as an advocate still are, and long will be, remembered. If such a reputation be inheritable, it is a burden or a benefit to the heir, according to his capacity to administer the succession. Mr. Butler's career at this bar may be summed up by the statement that his death left it undiminished.

¹ Memorial notice presented to the Appellate Division of the Supreme Court of the State of New York for the First Department.

Such a memorial as this has for its purpose a record of character, and a tribute of respect, and not a narrative of incidents. Mr. Butler's life, indeed, is conspicuous, not for striking events, but for a steady and continuous labor in an absorbing profession, and an equally steady and continuous flow of consequent reputation and prosperity. The graceful style, the poetic fancy and the brilliant wit which were among his native gifts, and which were effective professional weapons in his hands, certainly served him also for his own pleasure and that of others in moments of diversion, but by those who have known him at the bar, it will unhesitatingly be acknowledged that his lifework did not differ in character, if it did in the degree of prosperity and reputation by which it was deservedly rewarded, from that of any successful lawyer, charged with the responsibility of affairs of great importance and constantly absorbed in the exacting labor of adviser and advocate.

A reference to a few of the important cases in which Mr. Butler was engaged will serve as evidence of his rank in the profession :

In the case of the steamer *Pennsylvania* (19 Wall. 125) Mr. Butler was successful in obtaining a reversal, by the Supreme Court of the United States, of the decrees, both of the Circuit and District Courts, which had followed decisions of the English Admiralty Court and of the Privy Council. This decision conclusively settled the doctrine in collision cases that a vessel violating a rule of navigation laid down by statute must prove affirmatively that such violation could not have contributed to the disaster. The decision has been repeatedly cited and followed and has been of immense value in inducing compliance with the provisions of the statutes.

In *The Scotland* (105 U. S. 24), where Mr. Butler was again successful in spite of adverse decisions below, the Supreme Court of the United States established the rule that owners of foreign vessels may obtain the benefit of our statutes for the limitation of liability of owners of vessels for disasters on the high seas.

In *Sturgis vs. Spofford* (45 N. Y. 446) Mr. Butler successfully maintained the constitutionality of the law of 1853, establishing the Board of Commissioners of Pilots; and in *People vs. Vanderbilt* (26 N. Y. 286) he obtained an assertion of the power of that Board to prevent encroachments upon the public piers and in the harbor of New York.

Other important cases argued by Mr. Butler were *Union Trust Company vs. New York, Chicago & St. Louis R. R. Company*, involving the validity of the bonds and mortgage of the defendant company; *Rich vs. New York Central R. R.* (87 N. Y. 382 and 154 N. Y. 733), involving novel questions as to liability for tort arising from non-performance of contract; The Chicago Gas Trust Reorganization case, where the legality of the plan of reorganization was sustained against the opinion of a majority of leading lawyers of Chicago; *Fifth Avenue Bank vs. Colgate* (120 N. Y. 381), involving novel questions affecting liability under the Special Partnership Act; *Stephenson vs. Brooklyn R. R. Company* (114 U. S. 149), a case on patent law; *Liverpool & London Insurance Co. vs. Gunther* (116 U. S. 115), involving interesting questions in the law of fire insurance; the Legal Tender case of *Juilliard vs. Greenman* (110 U. S. 421), and the famous case of *Hoyt vs. Sprague* (103 U. S. 613), involving intricate questions of partnership law.

A just appreciation of Mr. Butler's thorough and general attainments in our many-sided science precludes, however, the ascription to him of superior attainments in any one of its branches. In the law of admiralty, of insurance, of real estate, of patents, of wills and testamentary trusts, of corporations and banking, as in other branches, sometimes considered specialties, he was a master, but he had too many specialties to be a specialist.

So. again, Mr. Butler was too sound and sagacious an adviser in his office, too brilliant and successful an advocate in the courts to be permitted to devote himself exclusively to one or the other of the two main divisions of the profession.

Perhaps the most effective work, however, was as an advocate ; and especially in the Appellate Courts, where his deep knowledge of the law, his phenomenal memory, his remarkable powers of elucidation and illustration of legal principles, and his temperate and almost judicial attitude of mind were most effectively brought into play.

But such talents as these, though always compelling admiration, would not alone command the grateful respect which it is sought here to record. It is as a conspicuous pattern of the nobler qualities of professional character that he should be described and remembered. That his integrity was spotless, his veracity undeviating, is hardly to be remarked, but it is remarkable that in him they appeared to be spontaneous and instinctive—to be of the inward essence of the man. Among the fruits of these fundamental qualities were candor and fairness in the statement, both of facts and principles, courtesy and generosity to his adversaries ; and his reward, in the confidence and affection of bench and bar, was as ample as deserved.

The rank accorded to Mr. Butler by his professional brethren is evidenced by his having served as President of the American Bar Association in 1885–1886, and as President of the Association of the Bar of the City of New York in the years 1887 and 1888.

No complete view of Mr. Butler could be made without a reference to his character as a man and a citizen. Evidence on these matters can best be found in the community in which a man has dwelt. For the last thirty-seven years of his life Mr. Butler was a resident of Yonkers. All the best elements in the development of this village, town and city, in which he lived and whose growth he watched, were of keen interest to Mr. Butler, and were generously fostered by him. As a devoted member of one of its largest churches, as the chief founder of a free reading room, which, until other instrumentalities superseded it, was of great benefit to the poorer classes ; as a large contributor in work and money to the building-up of the Women's Institute, for the benefit of working women,

one of the most successful institutions of the city ; as the wise adviser of one of its hospitals, and in many other ways, Mr. Butler showed his public spirit. While taking no prominent part in party management, he never failed, on occasion, to counsel his fellow-citizens upon public questions, on the platform and through the press, and no opinions were listened to with more respect or carried greater weight. His views in council were sought upon a great variety of subjects affecting the common welfare, and his influence, founded upon the confidence of the community in his high character, public spirit, fair and sound judgment, has for a generation been widely felt.

Nor was Mr. Butler's public spirit and usefulness unfelt in the city of New York, where he was constantly connected with important philanthropic work. He was, for instance, an active member, for many years, of the Board of Trustees of the Lenox Library, and, after its consolidation with the Astor and Tilden Libraries, and until his death, of the Board of Trustees of the New York Public Library.

Mr. Butler's life, with that of his distinguished father, covered a period which connects the present with the far different kind of professional life and work in the early years of the past century. During the many years which he devoted to his profession he was a marked figure. It is no disparagement of others to say that, from the beginning, his position was in the very front rank. Following upon the renown which by his name he inherited, his position might, in a special sense, be described as unique.

OHIO.

HERBERT L. BRICE.

Herbert L. Brice was born April 9, 1865, at Columbus Grove, Putnam County, Ohio, and died May 23, 1902.

His father, William Kirkpatrick Brice, was a Presbyterian minister and one of the pioneers of Northwestern Ohio, and he gave to his son a vigor of intellect and sturdiness of char-

acter which, improved by study and tempered by his love for humanity, made him a valuable citizen and a devoted friend.

He was graduated from the classical course in Princeton College in the Class of 1887, and at once began the study of law in the office of S. S. Wheeler, at Lima, Ohio. He attended Columbia Law College one year and in June, 1889, was admitted to practice in Ohio. On July 1, 1889, he became a member of the firm of Wheeler & Brice and remained a member until his death.

On September 19, 1901, he was attacked with a nervous chill, which developed into nervous prostration, and he gradually failed in health until the time of his death.

He served as president of the Board of Trade and was active in founding a Free Library Association and hospital, in both of which he was a life member.

He was a constant reader of the best literature and a student of all public questions, national and international. He believed that a lawyer should keep in touch and sympathy with all the forces which might aid men to a better civilization, that a lawyer was a public servant and should be able and willing to aid any movement in his community which might increase its happiness or prosperity. He was public-spirited, sometimes at the expense of his health, and any enterprise which would improve the moral or intellectual tone of his city had in him a leader with work and money. He was a lawyer, devoting his learning and energy to his clients, and allowed no side issues to distract him from his profession. He loved the law, which appealed to his acute logic and deep reasoning, and in it he found the science of sciences—the great controlling force of human progress.

GUSTAVUS HENRY WALD.

Gustavus Henry Wald was born on March 30, 1853, in the city of Cincinnati. He attended the public schools and was graduated from Hughes High School in the Class of 1869. He then went to Yale, where he was graduated in 1873. He

studied law in the Harvard Law School, where he received a degree in 1875, and at the same time was admitted to practice by the Supreme Court of Massachusetts. Returning to Cincinnati, he took up the law as a profession, going into the office of the Hon. George Hoadly, and in 1876 formed a partnership with Charles B. Wilby. The firm of Wilby & Wald continued until the death of Mr. Wald.

Mr. Wald's success at the bar was soon assured and he early took a position as one of its leaders. In the local Bar Association and in all things pertaining to the well-being of his profession he took a prominent part. He was one of the most active members from Cincinnati in the Ohio State Bar Association, where his influence was great, especially in matters of state legislation. Whether at the bar or in the Bar Associations, no one was left in any doubt as to his position on any subject. He came to his conclusions on legal and political matters after a thorough research and on logical principles and, having reached a conclusion, he maintained it in a kindly but manly manner.

The emoluments of the profession interested him little, but the principles which underlay a cause delighted him, and few lawyers made deeper research into them or understood them better after the investigations were completed. He was a master of the law, and loved it for its sake alone.

He was of counsel in much of the important litigation in Cincinnati and Ohio.

In 1895-6 he was instrumental in establishing in Cincinnati a law school upon the plan of the Harvard Law School, and was given the professorship of Contracts and Quasi-Contracts. When Judge Taft, who was the Dean of the new school, was appointed on the Philippine Commission, Mr. Wald was elected as his successor and filled the Deanship with great ability and marked success until his death.

His introductory lecture on the study of the Law of Contracts, delivered October 6, 1896, shows the lofty and scholarly spirit with which he approached the study of the science to which he devoted his great abilities. In closing that lecture he said :

"Lastly, if the study of the law has any place in the university, it must be studied as a science, as all other sciences are studied, from the original sources. The deductive method has had its day. Since Bacon's time the fruitful method of scientific study has been the inductive. The study of cases is only the application of the inductive method to the study of law as a science."

Mr. Wald remained a bachelor. He lived with his mother, now over eighty years of age, and the love which existed between them was remarkable. His devotion to her was more than ordinary. He consulted with her in regard to all of his literary and much of his legal work. The intellectual sympathy existing between them was strong.

Pinned up on the wall of his private office was the following quotation from Robert Louis Stevenson's "Weir of Hermiston:"

"To be wholly devoted to some intellectual exercise is to have succeeded in life; and perhaps only in law and the higher mathematics may this devotion be maintained, suffice to itself without reaction, and find continual rewards without excitement."

This epitomizes his devotion to his profession.

In closing an address at his funeral, ex-Attorney-General Judson Harmon said:

"It once fell to me to make an address on the life and character of one who had gone on before us. As I often did, because his friendly blows were always faithful, I submitted it to Mr. Wald. He read it, made some suggestions, and then, with kindling eyes, recited a verse, quite new to me, which he said would rightly close the address. Little did either of us think how it would recur to me, but as soon as I rallied from the first shock of the sad tidings yesterday, that verse rose in my memory. He gave it to me for another; I now give it back to him for himself. Only such a nature as it describes could so have found or kept or used it—

" 'As thrills of long-hushed melody
Live in the viol, so our souls grow fine
With keen vibrations from the touch divine
Of noble natures gone.' "

PENNSYLVANIA.

SAMUEL BAIRD HUEY.

Samuel Baird Huey, son of Samuel Culbertson and Mary Scott (Baird) Huey, was born in Pittsburg, Pennsylvania, January 7, 1843. On his father's side he was of Huguenot ancestry, the family, then Huet, having emigrated from France to Scotland, whence representatives came to this country. On his mother's side, Mr. Huey was of Scotch extraction. After attending private schools in Philadelphia he entered the Philadelphia High School, from which he was graduated in February, 1857. He matriculated at Princeton College and graduated with the degree of Bachelor of Arts in 1863. Three years later he received the degree of Master of Arts from that university. From 1863 until 1866 he was an ensign and paymaster in the United States Navy. At the end of this period of public service he began the study of the law in the office of John C. Bullitt and Samuel Dickson, at Philadelphia, matriculating at the same time in the Law Department of the University of Pennsylvania, from which he was graduated in 1868. He was at once admitted to the Philadelphia Bar. In 1870 he was admitted to practice before the Supreme Court of the United States. From 1867 until 1878, Mr. Huey served successively as Captain, Major and Adjutant-General of the National Guard of Pennsylvania. From 1897 until his death he was President of the Board of Trustees of the Williamson School, and President of the Philadelphia Board of Education. For fifteen years he was a Director, Secretary and Vice-President of the Union League, of Philadelphia. He was a member of the Loyal Legion, and also of the Free Masons, being a Past Master of Lodge 346. Mr. Huey married, June 4, 1868, Mary Hunt Abrams, by whom he had five children: Arthur Baird, Emma H., Samuel C., Malcom S. and Mary Dorothy. He died on November 21, 1901. In a memorandum of the chief events of his life, in his own handwriting and prepared

only a few weeks before his death, Mr. Huey says: "The ambitions of thirty years ago have not been realized, but I believe I have earned the respect and confidence of my fellow citizens." This estimate was modest and just, as was abundantly shown in the public regret which his untimely death occasioned in circles in Philadelphia in which his work was known and his services were appreciated.

JOSEPH CAMPBELL LANCASTER.

Joseph Campbell Lancaster was born in Philadelphia in 1861 and practiced law in that city until his death, on April 15, 1902. He was the son of George C. and Lucy (Campbell) Lancaster. His paternal grandfather, Joseph Lancaster, came to America from Westmoreland, England. His mother, Lucy Campbell, was a daughter of the Hon. John H. Campbell, a descendant of Sir James Campbell, Baronet of Auchinbrech. Mr. Lancaster's early education was received in the Friends' Central High School, the Hallowell Select School and Eastburn's Academy. In 1878 he matriculated at the University of Pennsylvania and was graduated in the Class of 1882 with the degree of Bachelor of Arts. He subsequently took a course in the Law Department of the University of Pennsylvania, his preceptor being William Henry Lex, Esq., and was admitted to the Philadelphia Bar in 1884. His death was caused by heart disease.

As a lawyer Mr. Lancaster was able and thorough; his perceptions were quick, and in the pursuit of the study of the law his ardor was indefatigable. He was a gentleman in the highest sense, affable, courteous and polished. His death in the early prime of manhood was a loss that extended not only to his family, but to the profession as well.

JAMES A. LOGAN.

James A. Logan, General Solicitor of the Pennsylvania Railroad Company, died on October 29, 1902, at his home at Bala, near Philadelphia.

Judge Logan was born in Westmoreland County, Pennsylvania, December 3, 1839. After graduating from the Elders Ridge Academy, at that time one of the leading schools of Western Pennsylvania, he commenced the study of law in the office of W. A. Stokes, of the Westmoreland County Bar. Upon Mr. Stokes entering the army, Mr. Logan transferred his registration to the office of the Hon. Harrison P. Laird, from which he was admitted to the bar in May, 1863. Within a few months of his admission he was nominated as the Republican candidate for District Attorney, and, though defeated for the office (the Democratic majority in that county being at that time a very large one), ran far ahead of his ticket.

In 1870 Judge Logan was appointed local counsel for the Pennsylvania Railroad Company at Greensburg. In the same year the delegates from Westmoreland County were instructed to support him for the Republican nomination for Congress, but he declined to make any contest for the nomination, preferring to confine himself solely to his professional duties. Upon the resignation, in 1871, of Judge Buffington, the President Judge of the judicial district which included the courts of Westmoreland, Indiana and Armstrong Counties, Judge Logan was appointed to the vacancy, being then thirty-one years of age and probably the youngest judge on the Common Pleas bench. In 1872 he was nominated to succeed himself by the Republican party for the full term of ten years, and was elected by a large majority. He served as judge until 1879, when he resigned to accept the position of Assistant General Solicitor of the Pennsylvania Railroad Company with his office at Philadelphia. Upon the resignation of the General Solicitor, ex-Senator Scott, in 1895, Judge Logan was elected to the position of General Solicitor, and held it until the time of his death.

When a member of the bench he won deserved praise for the strength and vigor with which he administered the business of the court on its civil side, and also by his firmness in administering the criminal law during the disturbances in the oil

fields in Armstrong County and the Italian riots in Westmoreland County.

In a busy career at the bar, such as Judge Logan's was, it is difficult to particularize the important cases in which he was concerned; but some of them may be referred to, such as the proceedings instituted in 1868 by Henry D. Foster to contest the seat in Congress of the Hon. John Covode, and the bitterly fought suit brought by Snodgrass & Painter against the Pennsylvania Railroad Company upon a claim of overcharges on large shipments of cattle made by the plaintiffs, who were contractors for the Union army. Two of the most famous litigations of the Pennsylvania Railroad Company with which Judge Logan was actively concerned were the South Penn Equity cases under bills filed by the Attorney-General on behalf of the state of Pennsylvania, and the Filbert Street Extension cases argued and decided in 1887 and 1888. These latter cases are, perhaps, the most important corporation cases, at least so far as the magnitude of the interests involved therein, which have been decided in Pennsylvania since the Constitution of 1874, and it was in these cases that the Supreme Court of Pennsylvania laid down the rule that the Constitution of Pennsylvania, in providing that "municipal and other corporations and individuals invested with the privilege of taking property for public use, shall make just compensation for property taken, injured or destroyed in the construction or enlargement of their works, highways or improvements," does not give a right of action against a railroad company for property injured in the operation of the railroad in the absence of any proof of negligence in such operation. A contrary decision would have retarded the growth and development of railroads in Pennsylvania to an incalculable degree, and the cases were fought out on the lines suggested by Judge Logan which were ultimately approved in the opinion of the court.

Judge Logan possessed, in a marked degree, the distinguishing characteristics of all great lawyers, a keen appreciation of

the vital point in the case and a realization of the various elements of strength and weakness in his own and in the adversary's facts, and these characteristics, coupled with an almost unlimited resourcefulness, made him a most valuable counselor and a dangerous opponent. With the tenacity of his Scotch-Irish ancestry he would vigorously maintain any proposition that he believed to be sound, and at the same time he seemed intuitively to scent any possible element of danger or weakness in the situation. His legal armory was equipped with weapons for all occasions, and the work he accomplished will always live. A steadfast friend, his death is not only a loss to the corporation he represented, but to many others who knew him.

VIRGINIA.

WILLIAM PLUMMER McRAE.

William Plummer McRae, of Petersburg, Virginia, died July 26, 1901, in the thirty-eighth year of his age. He was accidentally drowned while bathing in the Atlantic Ocean at Nag's Head, North Carolina.

He was the son of Rev. Cameron F. McRae, a minister of the Protestant Episcopal Church, and his wife, Sue Plummer, and was born at Warrenton, North Carolina, in 1863. Upon both sides he was descended from a distinguished ancestry. He never married.

Upon the death of his father, which occurred in his early life, he returned with his mother to his birthplace, Warrenton, North Carolina, and there received his primary education. He subsequently attended the University of North Carolina, at Chapel Hill, then the University School of W. Gordon McCabe, at Petersburg, Virginia, then the University of Virginia, in academic studies, then taught in the University School of Mr. McCabe, at Petersburg, then at the University

of Virginia studied law and received his degree of Bachelor of Law in 1885. Prior to this he received an appointment as a cadet at the United States Military Academy at West Point, but, after passing all the examinations for entrance, was rejected because slightly too young. This was a great disappointment to him, which he felt all through life, as he had a strong wish to be an army officer.

In 1885 he began the practice of law in the city of Petersburg, Virginia, and so continued until his death. During the Sessions of 1893-4, 1895-6, 1899-1900 and the Extra Session of 1901 he represented the city of Petersburg as one of its delegates in the legislature of the State of Virginia.

As a student and an instructor Mr. McRae was noted for accurate, thorough work and knowledge; as a member of the legislature he was very efficient and useful. He was the chairman of important committees, including the Judiciary Committee of the House of Delegates, and was twice appointed by the Governor of Virginia as a member of a committee of lawyers from Virginia to act with similar committees from other states under the auspices of the American Bar Association to consider and recommend the bringing about uniformity of laws on certain subjects throughout the United States. He was a member of this committee at the time of his death, and had rendered valuable services as such, having been chiefly instrumental in having the uniform law of negotiable instruments, recommended by the Association, made a part of the statute law of Virginia.

As a man, as a lawyer and as a member of the Virginia legislature, Mr. McRae stood high because of his ability and personal character. He fully possessed the confidence of the community in which he lived and of all who knew him well.

As a lawyer his marked characteristics were extreme modesty, with great clearness of thought, always based upon accurate information and after careful consideration of the subject upon which he expressed himself, and great firmness in his opinions when once formed. He would have made a most ex-

cellent and able judge. He was studious and thoughtful and his learning was not confined to the law; he was well-read and informed on general subjects.

Personally he was exceedingly retiring and diffident, but most charming and agreeable, and always considerate of others. His ideals were high. Had he lived to the usual age he would probably have become a very distinguished lawyer; even in his short life he had won a very enviable position. He was most highly regarded by those who knew him best, and in his death his state, his city and, possibly the country, suffered a great loss.

WISCONSIN.

THOMAS FRANCIS FRAWLEY.

Thomas Francis Frawley was born near Troy, New York, March 6, 1851. His parents, Thomas and Honora (Hogan) Frawley, were natives of Ireland. The family consisted of seven sons and two daughters, all of whom were well educated, and six of whom were graduated by the University of Wisconsin.

Soon after the birth of Thomas F. Frawley the family removed to the town of Vermont, in Wisconsin, and there he resided until 1875. He assisted in the cultivation of the farm and attended school during the winter months. He was also a student in the Albion Academy and the University of Wisconsin. In 1873 and 1874 he taught school at Highland and Dodgeville, but during that period continued his studies in the University and was graduated with the degree of B. S. with the Class of 1875, having largely paid the expenses of his collegiate course with money earned as teacher. He was a member of the Athenæ Society and participated in the joint debate in 1874. In 1880 his alma mater conferred on him the degree of A. M.

For five years after his graduation Mr. Frawley served as Principal of one of the High Schools at Eau Claire. During this period he commenced the study of his profession and formed the nucleus of his law library, which was probably at the time of his death the largest private law library in the state. Upon his admission to the bar in 1880, he abandoned the educational field. His practice soon grew to be remunerative, and he became one of the foremost members of the bar of his state.

In politics Mr. Frawley was a Democrat. In 1888 he served as delegate to the National Democratic Convention, held at St. Louis. In 1892, in an able speech, he placed in nomination for re-election the then existing state officers. For many years prior to 1896 Mr. Frawley was a member of the Democratic State Central Committee. In June of that year he was chosen both Temporary and Permanent Chairman of the Democratic State Convention which met at Milwaukee for the purpose of selecting delegates to the National Convention at Chicago. Upon taking the chair as presiding officer of the State Convention he forcibly outlined the policy of his party and made an able argument against a resolution for the free coinage of silver. This speech was influential in shaping the course of the state organization, but when it was found that the Chicago Convention favored the free silver policy, Mr. Frawley resigned his membership in the State Central Committee.

Mr. Frawley was for ten years a member and for several terms President of the Common Council of Eau Claire. He served for many years on the Board of Education of that city, as well as the County Board of Supervisors. At the time of his death he was President of the Eau Claire County Bar Association, and President of the Board of Trustees of the Eau Claire County Asylum for the Insane.

In August, 1877, Mr. Frawley was married to Lydia A., daughter of Joseph A. Lawler, one of the early settlers of Eau Claire and one of its most highly respected citizens. His

widow and one son, Thomas F. Frawley, Jr., of the age of nineteen years, survive the deceased.

During the twenty-two years that Mr. Frawley was a member of the legal profession he was of the firm of Frawley, Hendrix & Brooks, from 1881 to 1884; from 1884 to 1888 he practiced alone; the following year his brother, W. H. Frawley, was his partner, and from August, 1889, to August, 1890, he was associated with H. H. Hayden as a member of the firm of Hayden & Frawley. From August, 1890, to September, 1897, Mr. Frawley had no partner, but, at the latter date, the firm of Frawley, Bundy & Wilcox was formed, of which he was the senior member at the time of his decease.

In religion, Mr. Frawley was a Roman Catholic.

He died on the 30th day of June, 1902, at his home, of a sudden illness of appendicitis, at the age of fifty-one, in the midst of a successful professional career.

As a lawyer, Mr. Frawley owed his position as one of the foremost members of the bar of the state, largely to his energy and power of application, as well as the systematic treatment and analysis of his cases. His judgment was sound, his power of discrimination keen, his capacity for work unusual. He possessed a capacity for seizing the vital points in a case, and also had the faculty of strongly impressing his ideas upon others. In his intercourse with members of the bar he was noted for being courteous and obliging at all times, readily extending professional favors.

Mr. Frawley was one of the most public-spirited and useful citizens in the community in which he lived.

SUMMARY OF PROCEEDINGS OF STATE BAR ASSOCIATIONS

ALABAMA STATE BAR ASSOCIATION.

The twenty-fifth annual meeting was held at Huntsville, on July 4, 1902. The President's address was delivered by E. L. Russell, and dealt with legislation of Congress, the new constitution of Alabama and the new duties and responsibilities that rest upon the profession.

The annual address was delivered by J. R. LaMar on "The Work and Position of American Courts."

The Committee on Jurisprudence and Law Reform presented some discussion of the Monroe Doctrine. The report of the Committee on Judicial Administration and Remedial Procedure discussed in detail some provisions of the new Constitution. Reports were also made by the Committee on Legal Education and Admission to the Bar; the Committee on Correspondence; the Committee on Local Bar Associations, and the Committee on Publications.

Papers were read by W. T. Sanders on "Legislation Touching Legal Matters Under the New Constitution;" by S. W. John, on "Two Lawyers—Two Chief Justices;" by Daniel Coleman, on "Jury Reform."

BAR ASSOCIATION OF ARIZONA.

The ninth annual meeting was held in Phoenix, on January 12 and 13, 1903. The President, Robert E. Morrison, delivered the annual address.

Papers were read as follows: Wm. Herring, of the Tucson bar, "The Lawyer of the Future;" E. E. Ellingwood, of Prescott, "Uniformity of Legislation in the United States;"

T. J. Prescott, of Phoenix, "Evils of Industrial Combinations, and the Remedy."

A committee of three was appointed to collate errata in the Revised Statutes of 1901 for the purpose of securing their correction by the approaching legislature.

The annual dinner was held on January 17, 1903.

BAR ASSOCIATION OF ARKANSAS.

The fifth annual meeting was held at Little Rock, on May 27 and 28, 1902. The following papers were read:

"Some Thoughts on the Development of the Police Power," by Morris M. Cohn, Little Rock; "Principle *vs.* Precedent," by W. C. Rodgers, Nashville; "The Case of Macauley *vs.* Poe," by Jesse Turner, Van Buren; "The Alleged Decadence of the American Bar," by J. C. Norman, Hamburg.

CALIFORNIA STATE BAR ASSOCIATION.

No report has been received.

COLORADO BAR ASSOCIATION.

The fifth annual meeting was held at Colorado Springs, on July 1 and 2, 1902. The only legislation recommended was a constitutional amendment to consolidate the Supreme Court and the Court of Appeals. The Grievance Committee reported that during the year two attorneys had been disbarred at the instance of the Association, and that ten cases were then pending in the Supreme Court. The committee also reported that considerable time had been given to an endeavor to convict a newspaper editor, a police justice and two others, charged with attempting to bribe a jury in Denver.

A special committee was appointed to consider and report upon a bill relating to the Torrens System of Land Transfers.

The annual address was delivered by Wm. Travers Jerome, of New York city. A paper on "The Torrens System of Registering Title to Land" was read by Edward T. Taylor. Three papers, by James W. Bucklin, Harvey Riddell and

La Fayette Twitchell, were read relating to a constitutional amendment then before the people of the state for approval or rejection, commonly known as the "Bucklin Bill," providing for a "single tax."

STATE BAR ASSOCIATION OF CONNECTICUT.

This Association is reported as having held no meeting for several years, and as being practically extinct.

DELAWARE STATE BAR ASSOCIATION.

There has been no meeting of this Association since the meeting at which it was organized about two years ago.

BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA.

No report has been received.

GEORGIA BAR ASSOCIATION.

The nineteenth annual meeting was held at Warm Springs on July 3, 4 and 5, 1902. The session was largely occupied in the discussion of measures for relieving the congested condition of the docket of the Supreme Court. A committee appointed at the meeting prepared a bill to establish an intermediate Court of Appeals. Copies of this bill were mailed to all the members of the bar in the state. The bill was introduced but not acted on by the General Assembly. The Association recommended the passage of the "Negotiable Instruments Act;" that "days of grace" on commercial paper be abolished; that the provision allowing the graduates of certain law schools to be admitted to the bar upon the presentation of their diplomas be abolished and that all applicants for admission be required to pass an examination before the Board of Examiners. A special committee was appointed to investigate and report on the advisability of adopting the Torrens system of registering titles to land.

The annual address was delivered by Judge Horace H. Lurton, of Tennessee, on "The Evolution of the American

Law of Constitutional Limitations." "The Georgia-Tennessee Boundary Dispute" was the subject of President C. E. Battle's address. Papers were read as follows: "The History, Objects and Achievements of the Georgia Bar Association," by Chancellor Walter B. Hill, of the University of Georgia; "N. J. Hammond—A Sketch," by Z. D. Harrison, of Atlanta; "The State Bar Association in 1901," by Orville A. Park, of Macon; "The Necessity for Relief of the Supreme Court," by Justice A. J. Cobb; "The Judicial System of Georgia," by W. K. Miller, of Augusta; "The Effect which United States Courts will give to the Decisions of State Courts," by R. C. Alston, of Atlanta.

Reports were made by the Committees on Memorials, Interstate Law, Judicial Administration and Remedial Procedure, Legal Education, Legal Ethics, and Jurisprudence and Law Reform.

ILLINOIS STATE BAR ASSOCIATION.

The twenty-sixth annual meeting was held at Chicago on July 17 and 18, 1902.

The President's annual address was delivered by John S. Stevens and was devoted to the consideration of the standing of the legal profession, its influence at the present time and its condition in the future in its relation to the political, business and social life of the people.

W. J. White, of Montreal, Canada, delivered an address on the "Sources and Development of the Law of the Province of Quebec," showing the peculiar mingling of the French and English Jurisprudence, the common use of French and English as the language of the courts, and the organization of the bar and the courts and their jurisdiction.

John N. Jewett delivered an address on the "Writ of Injunction as a Governmental Agency," supporting the recent more extended use of the writ.

Murray F. Tuley delivered an address on "Compulsory Arbitration," contending that corporations should be required

by the state to arbitrate labor questions. This address drew a distinction between individuals and firms, on the one hand, and corporations on the other, holding that inasmuch as corporations are created by the state (or, if foreign corporations, transact business in the state by its permission), they are subject to such regulations as the state may enact and therefore they may be required to arbitrate labor questions.

William E. Church delivered an address on "The Tramp Corporation." This address deals with the modern tendency to organize corporations under the laws of one state for the purpose of doing business in some other state or states—often a business that they would not be permitted to do in the state that created them.

Jesse Holdom presented the report of the Committee on Law Reform advocating changes in the law of Habeas Corpus, in the statutes in relation to execution and foreclosure sales, and recommending the adoption of the Negotiable Instruments Law.

Sigmund Zeisler presented a report pointing out the deficiencies of the present constitution of Illinois and recommending the calling of a convention to frame a new constitution.

Adolph Moses presented the report of the Committee on the Revision of the Corporation Laws of Illinois proposing various changes in the laws of Illinois, chiefly relative to foreign corporations.

Frank Asbury Johnson presented a report on the State of Professional Morals, showing the efforts made towards maintaining the moral standard of the bar and preventing unlicensed persons from holding themselves out to the public as lawyers, and also contending that dishonesty and immorality, though not in strictly professional matters, should be a ground for disbarment.

Elmer E. Rogers presented the report of the Committee on Judicial Administration, reviewing the administration of justice in the various courts of Illinois, and proposing numer-

ous changes in detail; among them, that in civil actions a concurrence of nine jurors could render the verdict.

Otto Gresham presented the report of the Committee on the Advisability of Adopting a Code of Practice. Illinois is one of the states yet adhering to the Common Law Pleading and practice (though largely modified by statutes) and this report proposes the adoption of a code.

James DeWitt Andrews presented the report of the Committee on Legal Education proposing a uniform system of education based on modern jurisprudence and the use of the more scientific encyclopedic method.

James B. Bradwell presented a report, as Necrologist, giving a brief sketch of the members of the Bar of Illinois who had died during the year.

The session closed with the annual banquet.

STATE BAR ASSOCIATION OF INDIANA.

The sixth annual meeting was held at Indianapolis, July 8 and 9, 1902. A resolution favoring the establishment of a laboratory for the study of criminal and pauper and defective classes at Washington was unanimously adopted, also a resolution for the simplification of the practice of appeals, providing for making all motions and papers filed in the cause a part of the record and without being brought in by bills of exceptions. Also a resolution was adopted favoring the allowance of appeals in certain classes of misdemeanors and the right of appeal in civil cases; also a resolution to the effect that, in equity cases, the evidence on appeal should be weighed by the appellate judges where the finding is clearly against the weight of the evidence. A resolution was also adopted recommending that the salaries of the Supreme Court judges should be not less than \$6000 a year, those of the Appellate judges \$5000 and those of the Circuit and Superior judges not less than \$3500. A legislative committee was appointed to present the matters desired to the legislature and to frame appropriate legislation. The President's address upon the

subject "Upholding the Honor of the Profession" was delivered by the President, Theo. P. Davis, of Indianapolis. The annual address, "Seek Ye the Living Among the Dead," was delivered by Burton Smith, of Atlanta, Georgia.

Papers were read as follows: "Some Difficulties of Pan-American Arbitration," by William L. Penfield, Solicitor of the Department of State, Washington, D. C.; "The Right to Practice Law," by Geo. L. Reinhard, Dean of the Law School of Indiana University at Bloomington; "The Constitutional Convention of 1805," by William W. Thornton, of Indianapolis.

The dinner was given at the Columbia Club, in Indianapolis, on the evening of July 9th.

IOWA STATE BAR ASSOCIATION.

No report has been received.

BAR ASSOCIATION OF THE STATE OF KANSAS.

The Association held its nineteenth annual meeting at Topeka, January 30 and 31, 1902. One hundred and ninety-two lawyers attended, and it was one of the most successful meetings ever held in the history of the Association. The legislature did not meet in 1902, but several important matters for legislation at the next session have the support of the Association and will be pushed with vigor—notably reforms in Kansas probate laws and in the regulations involving admissions to the bar. A special committee on the "Universal Congress of Lawyers and Jurists," which is to meet in St. Louis in 1904, was appointed. In addition to a number of very interesting reports submitted by various committees, interesting principally, however, to Kansas lawyers, addresses were delivered

By President Silas Porter on "Taxation of Franchises," and by Governor W. E. Stanley on "Pardons and Paroles."

The annual address was delivered by James Hagerman, of St. Louis, on "Lawyers and Bar Associations."

Papers were read by Senator Frederick Dumont Smith on "Assessment and Taxations;" by A. L. Billings on the subject, "May a School Board of a Public High School in the State of Kansas Require a Pupil to take Elocution Contrary to the Expressed Wishes of the Parent;" by Sydney Hayden on "Probate Courts," and by Judge R. M. Pickler on "Delays and Technicalities in the Administration of Justice."

KENTUCKY STATE BAR ASSOCIATION.

The first annual meeting was held in Lexington on July 2 and 3, 1902. The Association recommended to the legislature, at its regular session in January, 1902, the passage of a bill intended to relieve the Court of Appeals by abbreviating the records in that court. The legislature failed to pass the bill recommended and the matter will be taken up again by the Association at the next session of the legislature.

The Association recommended a bill regulating admissions to the bar, which failed to pass the legislature, but the principal features of the Association's bill were embodied in a bill which became a law. Other measures were urged before the legislature, some of which failed and others became laws. Full reports were received and discussed from the Committee on Legal Education and Admission to the Bar; the Committee on Law Reform; the Committee on Grievances. The latter committee submitted a proposed code of ethics, the consideration of which was made a special order of business at the next annual meeting.

The annual address was made by Senator William Lindsay on "The Lawyer in Kentucky and Elsewhere."

The other speakers and their subjects were as follows: Malcolm Yeaman, of Henderson, on "Qualifications of a Lawyer;" Alexander P. Humphrey, of Louisville, on "The So-called Political Deliverances of the Court of Appeals of Kentucky;" Clarence U. McElroy, of Bowling Green, on "The Glorious Uncertainties of the Law;" Charles M. Lindsay, of Louisville, on "Restraints on Alienations of the Vested Fee Simple Es-

tate by Persons *sui juris*, with Special Reference to the Kentucky Decisions."

LOUISIANA BAR ASSOCIATION.

The Association held its annual meeting at New Orleans, on May 10, 1902. The principal legislation accomplished included an act authorizing the formation of trust companies which had not previously existed in the state.

Addresses were made by Charles F. Buck, the President of the Association, on "Trusts and the Law," and by Edwin T. Merrick on "Roger B. Taney."

MAINE STATE BAR ASSOCIATION.

The eleventh annual meeting of the Association was held at Bangor, on February 19, 1902.

The meeting is said by the secretary to have been purely a business meeting for the election of officers and the consideration of reports.

MARYLAND STATE BAR ASSOCIATION.

The seventh annual meeting was held at Ocean City on July 2 and 3, 1902.

The Committee on Judicial Administration and Law Reform reported a code of legal ethics, which had been presented at the previous meeting, and which the committee had carefully considered, making some changes and embracing the whole in forty sections. This code was adopted. This committee also reported adversely on three propositions: 1. To place the calling and payment of expert witnesses in the hands of the court. 2. To require an applicant for letters testamentary or of administration to file the names of the heirs at law. 3. To establish a permanent law reform commission. After some debate on these matters, which were considered not sufficiently practical in form, the adverse report upon all of them was adopted.

The Committee on Legal Education reported on the working of the act of 1898, constituting a State Board of Bar Examiners; also that the bill extending the required course from two years to three years had failed of passage in the legislature of 1902, and that an act had been passed authorizing the admission of women as members of the bar.

A very interesting debate was had on a recommendation to dispense with the present requirement of three years' standing at the bar as a qualification for membership in this Association. After considerable argument, in which both sides of the question were discussed, the amendment was lost.

The President's address was delivered by John S. Wirt on "Roger Brooke Taney." The annual address by Judge James Alfred Pearce on "Richard Bennett Carmichael."

MICHIGAN STATE BAR ASSOCIATION.

This Association held its thirteenth annual meeting on August 12 and 13, 1902, at Grand Rapids. There was no report of any legislation accomplished since the last meeting of the Association, there having been no session of the legislature during that year. The Committee on Legislation and Law Reform reported on three matters: 1. A bill designed to abolish the fee system as a mode of compensating Justices of the Peace. 2. A bill for the establishment of an Intermediate Court of Appeals and such amendments to the constitution as may be necessary for that purpose. 3. The Torrens Land Bill, so-called.

A motion was carried which committed the bill designed to abolish the fee system as a mode of compensating Justices of the Peace to the committee which reported it, with the request that they embody in it not only suggestions as to salary (that the salary should be for judicial services, so that there would be a clear distinction between fees received for ministerial services and those received for judicial services), but also that a bill (if such a course is necessary and desirable) be framed reducing and limiting the number of justices in each township. The

committee was authorized to frame such bill or bills and present the same to the next session of the legislature (January, 1903).

In regard to the bill to establish an Intermediate Court of Appeals, a motion was adopted favoring the submission by the legislature to the people of an amendment to the constitution which will empower the legislature to create an Appellate Court, and the committee was instructed, in case the constitutional amendment be adopted, to prepare and present a bill to the legislature for the organization of such court. The report of the committee recommending the adoption of a bill for the establishment of the Torrens System of Land Registration was lost.

The Committee on Legal Education and Admission to the Bar reported in favor of having all graduates of the Law Department of the University of Michigan and of the Detroit Law School examined by the State Board of Law Examiners before being admitted to practice. This report was adopted.

The Committee on Grievances reported in favor of having the Association take active steps looking toward the disbarment of attorneys who should be barred from practice. This report was adopted.

There was no address made except that of the President, Mark Norris, of Grand Rapids.

MINNESOTA STATE BAR ASSOCIATION.

The first annual meeting of the Association was held in the Hall of Representatives, in the Capitol, at St. Paul, on April 1, 1902. The President of the Association, Hiram F. Stevens, delivered his annual address, which was devoted largely to impressing upon the members the need of their coöperation in the revision of the statutes of Minnesota, which was about to be undertaken by a commission of which Mr. Stevens was the chairman. There were no formal reports from standing committees.

MISSOURI.

No report has been received.

MONTANA BAR ASSOCIATION.

The seventeenth annual meeting of the Association was held at Helena on January 14, 1902. The proceedings consisted of routine business.

A complete report of proceedings from 1885 to 1902, including a number of papers and addresses read at different times, has been published in one volume of 447 pages.

NEBRASKA STATE BAR ASSOCIATION.

The third annual meeting of the Association was held at Omaha, January 8 and 9, 1903.

The Committee on Legislation affecting the Profession recommended, first, continuance of the temporary device for relief of the Supreme Court, originally provided by legislation recommended at the first annual meeting, and constitutional amendments looking toward permanent relief of the court. Second, the simplification of appellate procedure by abolishing proceedings in error and substituting appeals in all cases, and third, a change in the statutes as to supersedeas bonds to remedy an anomaly now existing in the practice of this state, whereby decrees providing for the recovery of real property or the possession thereof may be superseded by giving a bond only against waste, thus enabling defendants to retain possession of land pending appeals in foreclosure cases without payment of rent. Two years ago this change was recommended and a strong effort was made to secure its adoption, but it failed for political reasons.

The Committee on Legal Education recommended some changes in the statutes relating to admission to the bar which were formulated in two resolutions adopted by the Association, the first of which recommends such legislation as will require all persons, before registering for the study of law with a view of admission to the bar, to prove by satisfactory examination that they possess a good English education. The second recommends such legislation as will require applicants

for admission to the bar to show that they have devoted at least three years to the study of law.

The Committee on Judicial Administration recommended a number of changes in the present laws of this state which were approved and are to be submitted to the legislature at the present session. First, it recommended changes in the statutes relating to divorce in conformity with those recommended by the commissioners on Uniformity of Laws. Second, a return in part to the old system of district or prosecuting attorneys which had been superseded by provision for a county attorney in each county. Third, changes in the statutes relating to the reform school, whereby the power of courts to commit to that institution rather than to the penitentiary will be considerably enlarged. Fourth, it recommended a measure giving trial judges the power to parol prisoners instead of committing them to prison in certain cases. A resolution was also adopted recommending to the legislature the Negotiable Instruments Law as prepared under the direction of the conference of commissioners on Uniformity of Laws.

S. P. Davidson, President of the Association, delivered the President's address and James H. McIntosh, of the Omaha Bar, read a paper entitled "The Power of Congress to Regulate Industrial Corporations."

The following papers were read: "The Popular Ratification of Constitutions: its Origin, Growth and Legal Necessity," by C. S. Lobingier, Commissioner of the Supreme Court; "Preparation for the Bar," by C. A. Robbins, of the State University; "The Highway Laws Considered," by W. H. Kelligar, of the Nemaha County Bar; "Should Fire Underwriters be Permitted to Put Forth Policies Known to be Void at the Date of Issue," by Halleck F. Rose, of the Lincoln Bar. The annual address was delivered by E. Benj. Andrews, Chancellor of the University of Nebraska.

BAR ASSOCIATION OF THE STATE OF NEW HAMPSHIRE.

The annual meeting of the Association was held at Concord on March 3, 1902. The President, Albert S. Batchellor, of Littleton, delivered an address upon "The Permanency of the Court." A memoir of the Hon. Caleb Blodgett was read by Judge James B. Richardson, of Massachusetts. The annual address was delivered by Judge Le Baron B. Colt, of Rhode Island. Arthur O. Fuller, of Exeter, read a paper upon "John Sullivan, the Lawyer and Judge."

NEW JERSEY STATE BAR ASSOCIATION.

The Association held its fourth annual meeting at Atlantic City, New Jersey, on June 13 and 14, 1902.

Owing to the efforts of the Association, the Supreme Court has promulgated rules the purpose of which is to raise the standards of general education of applicants for admission to the bar. It has also set on foot the amendments to the constitution of New Jersey with reference to the judiciary.

Reports were submitted by Charles H. Hartshorne, for the Committee on Legal Education, and by Edward Q. Keasbey, for the Committee on Law Reform.

Cortlandt Parker delivered an address on "The Life and Services of the late Chief Justice Depue." Gilbert Collins delivered the annual address on "The Codification of the Law."

NEW MEXICO BAR ASSOCIATION.

The sixteenth annual meeting was held on January 8, 1902, in Santa Fe.

No legislation was acted upon.

At the request of the Supreme Court, a committee was appointed to prepare and recommend new rules for the Supreme Court. A committee was appointed to examine into the method of publication of the tenth volume of New Mexico reports. It reported that that volume was unduly padded by including the entire briefs of counsel in some cases, while in other im-

portant cases no mention was made of the briefs, and recommended that the volume be not received as prepared.

There had been no official reporter up to this time, and, on recommendation of the Association, one was appointed by the Supreme Court to the end that the errors complained of may not occur in the future.

NEW YORK STATE BAR ASSOCIATION.

The twenty-fifth annual meeting was held in Albany on January 21 and 22, 1902. The meeting was presided over by William B. Hornblower, President of the Association.

The President's address was on "The State Constitution of 1894 as Affecting Appellate Tribunals."

A committee was appointed to prepare and present amendments to the constitution and code with regard to Appellate Courts, as outlined in the address.

The annual address was delivered in French by His Excellency, Jules Cambon, Ambassador of the French Republic to the United States, on "The Relations of Diplomacy to the Development of International Law, Public and Private." This was followed by an address of James M. Beck, Assistant Attorney-General of the United States, on the "Suppression of Anarchy."

The report of the Committee on Law Reform consisted of a paper presented by J. Newton Fiero, on the subject of "Shall Statutory and Code Revision be Abandoned?" After some discussion of the paper, a committee of fifty was appointed to act with the Committee on Law Reform in obtaining legislation relating to statutory and code revision. This committee afterwards organized, with President Hornblower as its chairman, and in connection with the recommendations made, a bill was introduced and passed by the legislature appointing a committee of fifteen members, which committee was requested to present to the next legislature suggestions relative to the condensation and revision of statutes.

Papers were read as follows: "Some Legal Aspects of Hypnotism," by George Trumbull Ladd, Professor of Philosophy, Yale University; "Deliberate Legislation," by Carman F. Randolph, of New York; "The Supreme Court and the Present Bankruptcy Law," by William Horace Hotchkiss, of Buffalo; "Some Needed Amendments to the Code Regarding the Waiver of Physicians' Privilege," by John De Witt Pelz, of Albany; "Interesting Features of German Law," by Rudolf Dulon, of New York; "Anarchism," by Joseph A. Kellogg, of Glens Falls; "Legislative and Judicial Desiderata," by James McC. Mitchell, of Buffalo.

NORTH CAROLINA BAR ASSOCIATION.

The fourth annual meeting was held in Asheville, N. C., on the 9th, 10th and 11th days of July, 1902. No legislation has been accomplished, the legislature being now in session.

The codification of the laws was recommended and a bill for this purpose has been introduced in the legislature. A resolution was passed requesting the Supreme Court to wear gowns. A change was recommended in the law relating to estates of tenants by the curtesy.

The annual address was delivered by Chief Justice Francis T. Nicholls, of the Supreme Court of Louisiana. His subject was "Special Features of the Louisiana Law." Papers were read by Geo. Rountree, of Wilmington, N. C., on "The Supreme Court of the United States," and by James C. McRae, Dean of the University of North Carolina Law School, on "The Triumph of Equity."

President C. M. Busbee delivered the president's address.

BAR ASSOCIATION OF NORTH DAKOTA.

The fourth annual meeting of the Association was held at the Chautauqua Grounds near Devil's Lake, North Dakota, on July 18, 1902, Seth Newman, President, in the chair. A resolution was offered by J. H. Bosard, which was adopted, that the legislature be requested to increase the salaries of the

judges of the Supreme Court and district courts of the state, it being the opinion of the members of the Bar Association that the present salaries are inadequate as compensation for the services required.

The President in his address discussed the various features of the Torrens System of Registration and a discussion was had upon that subject, but it was finally determined that no recommendation should be made to the legislature at its next session upon this subject, as it was deemed best to wait until some of the questions involved be further adjudicated in the states where the system had been adopted.

John E. Blair, of the University of Law, North Dakota, delivered an address upon the subject of qualifications for admission to the bar.

M. A. Hildreth, of Fargo, delivered a biographical address upon William Wirt.

OHIO STATE BAR ASSOCIATION.

The twenty-third annual meeting was held at Put-in-Bay, July 8, 9, 10 and 11, 1902. The debate included the question of uniform general laws, particularly with reference to classification of cities by population so as virtually to enact a local law; also the pending constitutional amendment abolishing double liability of stockholders of corporations. At the request of the governor of the state a committee of three was appointed to advise with him as to recommendations to be made to the legislature. Recommendations of the Committee on Judicial Administration and Legal Reform were adopted providing for a motion for a new trial after the term, provided three days have not elapsed, approving a bill before Congress allowing the use of the original papers in equity and admiralty cases, and approving the proposed constitutional amendment giving the veto power to the governor. A committee of five was appointed to report a method of preventing errors in and unsatisfactory appearance of the Ohio State Reports.

The President's address was made by S. S. Wheeler; the annual address by John K. Richards, Solicitor-General, on "The Insular Cases;" and papers were read by John W. Warrington, of Cincinnati, on "The Governor and the Veto Power;" by Chief Justice John A. Schauck on "The Present Methods of Work by the Supreme Court of Ohio."

OREGON BAR ASSOCIATION.

The twelfth annual meeting of the Oregon Bar Association was held in Portland on November 18 and 19, 1902.

The Association recommended the amendment of the Practice Act of the state permitting the use of a general or specific denial in pleading, the former practice of the state having required a specific denial of each and every allegation controverted in the complaint or new matter in the answer controverted by the plaintiff.

The Association unanimously recommended the passage of an act appointing a commission for the state of Oregon to meet with like commissions appointed for other states to consider the subject of uniform legislation, this act being in accord with the action taken by Bar Associations generally throughout the United States.

A Committee on Uniform Legislation, appointed at the last meeting, recommended the adoption, and the Association unanimously approved, the adoption of proposed laws relating to acknowledgments of deeds, the standard of weights and measures, execution of wills, and relative to the transfer of stock in corporations. The recommendation was unanimously approved. The subject of laws relating to marriage, divorce and probate of foreign wills was referred to the Committee on Uniform Legislation for further consideration and report at the next annual meeting of the Association.

The Executive Committee, in arranging for this meeting of the Bar Association, arranged for a discussion by the Association of the following subjects :

1. Shall the Association recommend the amendment of the code permitting the use of the general denial?

2. Shall the Association recommend the amendment of the code permitting the commencement of an action or suit by service of summons?

3. Shall the Association recommend an amendment of the code permitting persons over twenty-one years of age, not a party to a suit or action, to serve summons?

4. Shall the Association recommend the amendment of the code declaring personal service of summons out of the state to be equivalent to publication and without the necessity of an affidavit for or an order of publication?

5. Shall the Association recommend the amendment of the laws permitting a majority of a jury to return a verdict?

All of these questions suggested a change in the practice and were discussed fully. Only the first was recommended by the Association for adoption.

Addresses were delivered by the President, Judge J. B. Clealand; by Judge Alfred F. Sears, Jr., subject, "Matthew P. Deady—A Sketch," and the occasional address of the meeting was delivered by Judge R. P. Boise, subject, "Fifty Years' Recollection of the Bench and Bar of Oregon."

PENNSYLVANIA BAR ASSOCIATION.

The eighth annual meeting of the Association was held at Cambridge Springs, June 30, July 1 and 2, 1902. No meeting of the legislature has been held since the seventh annual meeting of the Association in 1901.

The most important subjects treated at the meeting were the reports of the Committees on Law Reform, and on Uniformity of Legislation in the Various States, and on Legal Biography.

The address of the President, Alex. Simpson, Jr., reviewed the present system of making annual appropriations among the charities of the state and discussed the judicial decisions of the year. He made a most exhaustive review of the decision of

the Supreme Court in Commonwealth *ex rel.*, vs. Moir, 199 Pa. 534, upon what are known in Pennsylvania as the Ripper Bills.

The honorary address was made by William Wirt Howe, of Louisiana, on "*Jus Gentium* and Law Merchant." Other papers were presented by Richmond L. Jones, of Reading, on "Business Corporations in Pennsylvania;" Samuel W. Cooper, of Philadelphia, on the "Abolition of Actions for Breach of Promise of Marriage and Alienation of Affections;" John I. Rogers, of Philadelphia, on "Military Law and its Tribunals;" Henry J. Steele, of Easton, on the "Right of the Municipality to Abate a Nuisance on the Streets Without the Preliminary Action of the Courts."

The recent increase of membership has made this, it is believed, the largest state bar association.

RHODE ISLAND BAR ASSOCIATION.

The fifth annual meeting of the Association was held in Providence, on December 1, 1902.

After routine business a banquet was served, after which Walter S. Logan, of the New York Bar, delivered an address on "Interstate Commerce and the Constitution." This was followed by Edwin C. Pierce, of the local bar, who addressed the Association on "Probate Courts in Rhode Island."

It was voted that the President appoint a committee to consider the matter of reform in the probate system.

SOUTH CAROLINA BAR ASSOCIATION.

The tenth annual meeting of the Association convened in Columbia, on January 15 and 16, 1903. Most of the time was spent in hearing and discussing reports of Committees on Education and Admission to the Bar, Commercial, Interstate and International Law, Jurisprudence and Law Reform, and Judicial Administration and Remedial Procedure. The President's address was delivered by C. A. Wood; the annual address, on "What shall we do with Our Dependencies," by Moorfield Storey, of Boston, and an address on "Noteworthy Changes in the Statute Law," by W. F. Stevenson.

SOUTH DAKOTA BAR ASSOCIATION.

No report has been received.

BAR ASSOCIATION OF TENNESSEE.

The Association held its twenty-first annual meeting at Nashville, on May 26, 27 and 28, 1902. President J. H. Acklan, of Nashville, delivered the President's annual address. The Association could report very little accomplished in the way of practical legislation. The only bill of any importance which the Association succeeded in getting through the last legislature, was a new jury law for certain counties in the state. Papers were read as follows: By E. T. Sanford, of Knoxville, on "The Federal Convention of 1787;" By J. W. Judd, "Can Congress Constitutionally Empower the Inter-State Commerce Commission to Fix Railroad Rates;" by E. S. Mallory, of Jackson, on "Dower in Qualified Fees;" by A. S. Colyar, of Nashville, on "Some Bits of Unpublished History."

The Committee on Judicial Administration and Remedial Procedure, and the Committee on Jurisprudence and Law Reform made their reports and recommended several bills relating to practice for passage by the General Assembly which were approved by the Association. The Committee on Legal Education and Admission to the Bar reported and urged the passage of a bill before the next General Assembly, taking away from all law schools in the state the right to license lawyers on diploma or certificate of graduation and placing this right entirely in the hands of the Supreme Court, under such commission as the court might think best to appoint. The Association, since 1888, has labored to secure the passage of a bill of this kind, but has been unable to do so, and hopes to meet with better success before the present legislature.

TEXAS BAR ASSOCIATION.

The twenty-first annual session of the Association was held in Dallas, on July 2 and 3, 1902.

The Association discussed and recommended amendments to existing state legislation upon the following subjects: One acquiring title to land by ten years' adverse possession should lose the same, as against an innocent purchaser from the holder of the record title, after his abandonment of such possession, unless he shall place of record some evidence of his claim; recorded instruments acknowledged before an officer authorized by law, including deeds of married women, shall be presumed to have been properly acknowledged after the expiration of five years from their registration; a period of limitation should be prescribed barring actions by the state to cancel patents to land; the Torrens system of registration of land titles should be adopted; remarriage of divorced persons should be prohibited for a limited number of years; habitual drunkenness and the husband's failure to support should be made a ground for divorce; the state laws for the suppression of trusts and monopolies should be amended to remedy certain constitutional defects disclosed by recent decisions on the existing statutes; the law authorizing the conducting of insurance business by mutual companies without capital stock should be modified and such companies should be subjected to the supervision of the Insurance Commissioner; amendments should be made to the corporation law so as to permit the incorporation of companies for growing rice, the chartering of private banking corporations, the inclusion, within limits, of more than one specified purpose in the same charter, the requirement of payment by a new corporation of franchise tax for only a proportionate part of the year during which it was chartered; the registration in the clerk's office at its domicile of the by-laws and names of officers and agents of the corporation.

It was also recommended that the salaries of appellate and district judges should be increased, and that a remission of state taxes to the county of Galveston be made, in aid of the construction of a sea wall for protection against storms.

The annual address of the President, James B. Stubbs, dealt with statutory changes in the laws during the year past.

Papers were read before the Association on the subjects following: "The Story of a Land Title," by Maco Stewart, of the Galveston Bar; "Trial by Jury in Civil Cases," by Charles J. Harris, of the Harris County Bar; "The Rights of Riparian Owners in the Matter of Irrigation," by Yancey Lewis, of the University of Texas.

STATE BAR ASSOCIATION OF UTAH.

The tenth annual meeting of the Association was held at Salt Lake City on January 12, 1903.

The state legislature is now in session and the Association hopes to accomplish several important changes in the laws in line with suggestions contained in the annual address of the former President, C. S. Varian. Some of these are:

More stringent rules governing admission of attorneys to the bar.

To increase the salaries of the Supreme and District judges.

To compel reform in the matter of adjudication and commitment to the asylum in cases of insanity.

Restoration of the grand jury system, which, under the constitution, seems to contemplate substantially only the administration of the criminal law.

M. M. Warner, of Provo, Utah, read an address on the subject, "Precedent *vs.* Justice."

Judge H. S. Tanner, of Salt Lake, read a paper on "Comity."

VERMONT BAR ASSOCIATION.

No report has been received.

VIRGINIA STATE BAR ASSOCIATION.

The fourteenth annual meeting of the Association was held at the Hot Springs of Virginia on August 5, 6 and 7, 1902.

The annual address was by James B. Gantt, of Jefferson City, Missouri, on the subject "The Nisi Prius Judge in Our Judicial System." The President's address, by Thomas C. Elder, of Staunton, was entitled "Private Business Corpora-

tions in Virginia." The following papers were read by other members of the Association: "The Enforcement of Legal Rights by a Court of Equity," by H. St. George Tucker, of Staunton; "The Impeachment and Trial of Andrew Johnson," by Theodore S. Garnett, of Norfolk; "The Work of the Constitutional Convention," by Senator John W. Daniel, of Lynchburg.

Through the efforts of a special committee, of which Eugene C. Massie, of Richmond, was chairman, a provision was incorporated in the new constitution of Virginia, which went into effect on July 10, 1902, as follows:

"Section 100. The General Assembly shall have power to establish such court or courts of land registration as it may deem proper for the administration of any law it may adopt for the purpose of settlement, registration, transfer, or assurance of titles to land in the state, or any part thereof."

This provision was designed for the administration of the Torrens System of land registration, which has been advocated by Mr. Massie before the Association for some years, and one of the most interesting features of the annual meeting mentioned above was the discussion of this subject in which a number of the members took part. A resolution was adopted requesting the committee aforesaid to draft a bill for adoption by the legislature. Such a bill has been drawn by Mr. Massie and will be passed by the present legislature.

WASHINGTON STATE BAR ASSOCIATION.

The Association held its fourteenth annual session in Ellensburg on August 5, 6 and 7, 1902.

It took action favoring the passage by Congress of Senate Bill No. 5672, entitled, "A Bill to Abolish the Circuit Courts, to Define and Increase the Jurisdiction of, and to Simplify Appeals from, the District Courts of the United States, and for other Purposes." The Association indorsed the propositions for the amendment of the state constitution so as to make judicial elections fall in other years than those when general

elections for political offices are held, and increasing the tenure of Supreme judges from six to eight years; also, proposed bills providing for appeals to the Supreme Court from judgments of appropriation; for the protection of occupants of land who have in good faith made permanent improvements thereon; and for the amendment of the act in relation to garnishment in justice courts.

The President's address was delivered by Austin Mires, of Ellensburg. Papers were read by Edward Witson, of North Yakima, on "The Course of Legislation in Washington;" by Will G. Graves, of Spokane, on the "Stability of Legal Principles—a Thing of the Past;" by Arthur Remington, "Railway and Transportation Commissions;" by Judge C. H. Hanford, "Conflicting Decisions of Federal and State Courts;" by Orange Jacobs, "Reminiscences of Bench and Bar," and by Edward Pruyn, a poem entitled, "A Day in Court."

WEST VIRGINIA BAR ASSOCIATION.

The sixteenth annual meeting was held at Clarksburg, on February 12 and 13, 1902. A debate was followed by the adoption of resolutions favoring the pending constitutional amendment increasing the number of judges of the Supreme Court of Appeals from four to five; the reference to the Committee on Judicial Administration and Legal Reform of a resolution favoring the abolition of the right of removal of causes from state to federal courts, and the adoption of a resolution recommending separate judicial conventions. A code of ethics was adopted.

The President's address was made by John Bassel, of Clarksburg. The annual address was by D. T. Watson, of Pittsburgh, Pa., on "The Bar," and a paper was read by Z. T. Vinson, of Huntingdon, on "Railway Corporations and Juries."

STATE BAR ASSOCIATION OF WISCONSIN.

The last annual meeting was held at Madison on February 12, 1901. At the time of the last meeting the membership

was increased to 530 on the rolls. The Committee on the Amendment of the Law reported that partly as a result of its efforts the Negotiable Instruments Act, prepared under the supervision of the American Bar Association, had been passed. In passing this act the legislature of Wisconsin adopted the innovation of appending notes of decisions of the courts to many of the sections, explanatory of the sections and illustrating their subject-matter. This committee further reported that an effort would be made to increase the requirements for admission to the bar.

A code of ethics was adopted.

Joshua Stark delivered the President's address on the subject of "Duties and Obligations of Attorneys." Papers were read as follows: "The New Codes of Japan," by B. K. Miller, Jr., of Milwaukee; "The Career of Aaron Burr, an Episode in American History," by E. A. Otis, of Chicago; "Is the Remedy for the Evils of Industrial Combinations to be Found in Economic or State Laws?" by I. K. Boyeson, of Chicago.

LIST OF BAR ASSOCIATIONS IN THE UNITED STATES.

NOTE.—This list has been compiled by the Secretary of the American Bar Association from replies to circulars sent out. While pains have been taken to make it as complete as possible, it is probable that some Associations have been omitted. All Associations which are purely Library Associations are intended to be omitted. In some cases the officers for former years are given where officers for 1902 are not known.

The Secretary will be much indebted for information of any omissions and for corrections of the names of officers.

ALABAMA.

NAME.	PRESIDENT.	SECRETARY.
Alabama State Bar Association.	Lawrence Cooper, Huntsville.	Alex. Troy, Montgomery.
BIRMINGHAM BAR ASSOCIATION.	John London, Birmingham.	L. J. Haley, Jr., Birmingham.

ARIZONA.

Bar Association of Arizona.	Robert E. Morrison, Prescott.	Thomas J. Prescott, Phoenix.
NORTHERN ARIZONA BAR ASSOCIATION.	John C. Herndon, Prescott.	Thomas C. Job, Prescott.

ARKANSAS.

Bar Association of Arkansas.	George B. Rose, Little Rock.	Henry Barmistead, Little Rock.
FORT SMITH BAR ASSOCIATION.	James F. Read, Fort Smith.	Lovick P. Miles, Fort Smith.

CALIFORNIA.

California State Bar Association.	R. E. Ragland, (1901) San Francisco.	R. L. Simpson, (1901) San Francisco.
LOS ANGELES BAR ASSOCIATION.	Lucien Shaw, Los Angeles.	W. R. Hervey, Los Angeles.

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CALIFORNIA—Continued.

NAME.	PRESIDENT.	SECRETARY.
OAKLAND BAR ASSOCIATION.	J. H. Smith, Oakland.	Geo. E. DeGolia, Oakland.
SACRAMENTO BAR ASSOCIATION.	Grove L. Johnson, Sacramento.	S. Luke Howe, Sacramento.
BAR ASSOCIATION OF SAN DIEGO.	A. Haines, San Diego.	Johnson Puterbaugh, San Diego.
BAR ASSOCIATION OF SAN FRANCISCO.	Warren Olney, San Francisco.	George J. Martin, San Francisco.

COLORADO.

Colorado Bar Association.	Horace G. Lunt, Colorado Springs.	Lucius W. Hoyt, Denver.
DENVER BAR ASSOCIATION.	George F. Dunklee, Denver.	James M. Lomery, Denver.
GILPIN COUNTY BAR ASSOCIATION.	Clayton F. Becker, (1900) Central City.	J. D. Hurd (1900), Central City.
TELLER COUNTY BAR ASSOCIATION.	Charles C. Butler, Cripple Creek.	L. G. Campbell, Cripple Creek.

CONNECTICUT.

State Bar Association of Connecticut.	Charles E. Perkins, Hartford.	Chas. M. Joslyn, Hartford.
BRIDGEPORT BAR ASSOCIATION.	Howard J. Curtis, Stratford.	Wm. H. Kelsey, Bridgeport.
HARTFORD COUNTY BAR ASSOCIATION.	Charles E. Perkins, Hartford.	William F. Henney, Hartford.

DELAWARE.

Delaware State Bar Association.	Benjamin Nields, Wilmington.	T. Bayard Heisel, Wilmington.
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DELAWARE—Continued.

NAME.	PRESIDENT.	SECRETARY.
KENT COUNTY BAR ASSOCIATION.	Henry R. Johnson, (1901) Dover.	A. M. Daly, (1901) Dover.
BAR ASSOCIATION OF NEW CASTLE COUNTY.	Herbert H. Ward, Wilmington.	David J. Reinhardt, Wilmington.
BAR ASSOCIATION OF SUSSEX COUNTY.	Charles F. Richards, Georgetown.	Albert F. Polk, Georgetown.

DISTRICT OF COLUMBIA.

Bar Association of the District of Columbia.	Benj. F. Leighton, Washington.	Percival M. Brown, Washington.
FEDERAL BAR ASSOCIATION OF D. C.	John W. Douglass, Washington.	George A. King, Washington.
PATENT LAW ASSOCIATION OF WASHINGTON.	Wm. Cranch McIntire, Washington.	Arthur P. Greeley, Washington.

FLORIDA.

HILLSBOROUGH COUNTY BAR ASSOCIATION	E. R. Gunby, Tampa.	M. Henry Cohen, Tampa.
JACKSONVILLE BAR ASSOCIATION.	A. W. Cockrell, Jacksonville.	George M. Powell, Jacksonville.
KEY WEST BAR ASSOCIATION.	L. W. Bethel, Key West.	Julius Otto, Key West.
MARIANNA BAR ASSOCIATION.	W. H. Milton, (1901) Marianna.	J. C. McKinnon, (1901) Marianna.

GEORGIA.

Georgia Bar Association.	Burton Smith, Atlanta.	Orville A. Park, Macon.
ATLANTA BAR ASSOCIATION.	Jno. L. Hopkins, Atlanta.	William P. Hill, Atlanta.
AUGUSTA BAR ASSOCIATION.	J. C. C. Block, Augusta.	D. G. Fogarty, Augusta.

GEORGIA—Continued.

NAME.	PRESIDENT.	SECRETARY.
LA GRANGE BAR ASSO- CIATION.	D. J. Gaffney, La Grange.	Frank Harwell, La Grange.
BAR ASSOCIATION OF CITY OF MACON.	Washington Dossan, Macon.	Andrew W. Lane, Macon.

ILLINOIS.

Illinois State Bar Association.	Murray F. Tuley, Chicago.	James H. Matheny, Springfield.
STATES ATTORNEYS AS- SOCIATION OF ILLINOIS.	A. L. Anderson, (1901) Lincoln.	William V. Taft, (1901) Peoria.
CHICAGO BAR ASSOCIA- TION.	John J. Herrick, Chicago.	Henry W. Price, Chicago.
CHICAGO LAW INSTITUTE.	N. M. Jones, Chicago.	Alfred E. Barr, Chicago.
THE LAW CLUB OF THE CITY OF CHICAGO.	Harrison Musgrave, Chicago.	Victor Etting, Chicago.
THE ILLINOIS COUNTY AND PROBATE JUDGES ASSOCIATION.	Orrin N. Carter, Chicago.	M. W. Thompson, Danville.
THE PATENT LAW ASSO- CIATION.	Albert H. Adams, Chicago.	Otto R. Barnett, Chicago.
SANGAMON COUNTY BAR ASSOCIATION.	J. W. Patton, Springfield.	A. G. Murray, Springfield.
VERMILLION COUNTY BAR ASSOCIATION.	M. W. Thompson, (1901) Danville.	J. W. Keeslar, (1901) Danville.

INDIANA.

State Bar Associa- tion of Indiana.	Truman F. Palmer, Monticello.	Merrill Moores, Indianapolis.
ADAMS COUNTY BAR AS- SOCIATION.	Robert S. Peterson, Decatur.	Clark J. Lutz, Decatur.

INDIANA—Continued.

NAME.	PRESIDENT.	SECRETARY.
CLAY COUNTY BAR ASSO- CIATION.	George A. Knight, Brazil.	John M. Rawley, Brazil.
CLINTON COUNTY BAR ASSOCIATION.	Charles G. Guenther, Frankfort.	James T. Hockman, Frankfort.
DANVILLE BAR ASSOCIA- TION.	Thaddeus S. Adams, Danville.	Roscoe C. Pennington, Lebanon.
DEARBORN COUNTY BAR ASSOCIATION.	Wm. R. Johnston, Lawrenceburg.	Warren H. Hauck, Lawrenceburg.
DEKALB COUNTY BAR ASSOCIATION.	Don A. Garwood, Auburn.	James E. Pomeroy, Auburn.
ELKHART COUNTY BAR ASSOCIATION.	William J. Davis, Goshen.	Louis A. Dennert, Goshen.
EVANSVILLE BAR ASSO- CIATION.	Alexander Gilchrist, Evansville.	Philip W. Frey, Evansville.
GRANT COUNTY BAR AS- SOCIATION.	Henry J. Paulus, Marion.	Field W. Sweezey, Marion.
HAMILTON COUNTY BAR ASSOCIATION	John F. Neal, Noblesville.	Meade Vestal, Noblesville.
HOWARD COUNTY BAR ASSOCIATION.	W. C. Purdum, Kokomo.	John R. McIntosh, Kokomo.
INDIANAPOLIS BAR AS- SOCIATION.	Alexander C. Ayres, Indianapolis.	Ernest R. Keith, Indianapolis.
JAY COUNTY BAR ASSO- CIATION.	David T. Taylor, Portland.	George W. Bergman, Portland.
KNOX COUNTY BAR AS- SOCIATION.	Samuel W. Williams, Vincennes.	Robert G. Cauthorn, Vincennes.
LAKE COUNTY BAR ASSO- CIATION.	Armanis F. Knotts, Hammond.	(Vacant)

INDIANA—Continued.

NAME.	PRESIDENT.	SECRETARY.
MADISON COUNTY BAR ASSOCIATION.	(Vacant)	Edward D. Reardon, Anderson.
MARTINSVILLE BAR ASSOCIATION.	James V. Mitchell, Martinsville.	E. Forest Branch, Martinsville.
PUTNAM COUNTY BAR ASSOCIATION.	Delana E. Williamson, Greencastle.	Smith Matson, Greencastle.
RANDOLPH COUNTY BAR ASSOCIATION.	James S. Engle, Winchester.	Alonzo L. Bales, Winchester.
SHELBY COUNTY BAR ASSOCIATION.	Isaac Carter, Shelbyville.	George H. Meiks, Shelbyville.
STARKE COUNTY BAR ASSOCIATION.	James W. Nichols, Knox.	W. C. Pentecost, Knox.
THIRTY-FIFTH JUDICIAL CIRCUIT BAR ASSOCIATION.	James E. Rose, Auburn.	H. W. Mountz, Garrett.
VERMILLION COUNTY BAR ASSOCIATION.	Martin G. Rhoads, Newport.	(Vacant)
WABASH BAR ASSOCIATION.	Alvah Taylor, Wabash.	Oliver H. Bogue, Wabash.

IOWA.

Iowa State Bar Association.	R. M. Haines, Grinnell.	Sam S. Wright, Tipton.
BLACKHAWK COUNTY BAR ASSOCIATION.	O. B. Courtright, Cedar Falls.	J. S. Tuthill, Waterloo.
BOONE COUNTY BAR ASSOCIATION.	S. R. Dyer, Boone.	W. W. Goodykoontz, Boone.
CASS COUNTY BAR ASSOCIATION.	John W. Scott, Atlantic.	W. A. Follett, Atlantic.

IOWA—Continued.

NAME.	PRESIDENT.	SECRETARY.
CEDAR COUNTY BAR ASSOCIATION.	E. M. Brink, Tipton.	Vacant
CLARKE COUNTY BAR ASSOCIATION.	M. L. Temple, Osceola.	J. J. McIntire, Osceola.
CLAYTON COUNTY BAR ASSOCIATION.	James O. Crosby, (1900) Garnavillo.	B. W. Newberry, (1900) Garnavillo.
CLINTON COUNTY BAR ASSOCIATION.	J. S. Darling, (1900) Clinton.	J. W. Ellis (1900), Clinton.
DECATUR COUNTY BAR ASSOCIATION.	J. W. Harvey, (1901) Leon.	C. W. Hoffman, (1901) Leon.
DUBUQUE COUNTY BAR ASSOCIATION.	Glen Brown, Dubuque.	S. B. Lattner, Dubuque.
FAIRFIELD LAW LIBRARY ASSOCIATION.	Robert F. Ratcliff, Fairfield.	E. F. Simmons, Fairfield.
HAMILTON COUNTY BAR ASSOCIATION.	(Vacant)	G. F. Tucker, Webster City.
JACKSON COUNTY BAR ASSOCIATION.	D. A. Fletcher, Maquoketa.	D. T. Bauman, Maquoketa.
JASPER COUNTY BAR ASSOCIATION.	O. C. Meredith, Newton.	J. A. Mattern, Newton.
JEFFERSON COUNTY BAR ASSOCIATION.	Beh McCoy, (1901) Fairfield.	Frank T. Nash, (1901) Fairfield.
JOHNSON COUNTY BAR ASSOCIATION.	Steph. Bradley, Iowa City.	R. P. Howell, Iowa City.
JONES COUNTY BAR ASSOCIATION.	J. S. Stacy, Anamosa,	W. I. Chamberlain, Wyoming.
KEOKUK COUNTY BAR ASSOCIATION.	H. H. Trimble, (1900) Keokuk.	W. J. Roberts, (1900) Keokuk.

IOWA—Continued.

NAME.	PRESIDENT.	SECRETARY.
KOSSUTH COUNTY BAR ASSOCIATION.	E. V. Swetting, (1900) Algona.	Charles A. Cohenour, (1900) Algona.
LEE COUNTY BAR ASSOCIATION.	H. H. Trimble, (1901) Keokuk.	Hazen I. Sawyer, (1901) Keokuk.
LOUISA COUNTY BAR ASSOCIATION.	John Hale, Wapello.	W. H. Hurley, Wapello.
LUCAS COUNTY LAW LIBRARY ASSOCIATION.	T. M. Stuart, Chariton.	L. B. Bartholomew, Chariton.
MAHASKA COUNTY BAR ASSOCIATION.	John O. Malcolm, Oskaloosa.	C. Ver Ploeg, Oskaloosa.
BAR ASSOCIATION OF MONONA COUNTY.	H. Chrisman, Mapleton.	Azariah Kindall, Onawa.
MONROE COUNTY BAR ASSOCIATION.	T. B. Perry, Albia	D. W. Bates, Albia.
MUSCATINE COUNTY BAR ASSOCIATION.	J. Carskaddan, (1900) Muscatine.	William Hoffman, (1900) Muscatine.
POLK COUNTY BAR ASSOCIATION.	Geo. H. Carr, Des Moines.	J. B. Ryan, Des Moines.
SCOTT COUNTY BAR ASSOCIATION.	Joe R. Lane, Davenport.	R. C. Ficke, Davenport.
SHELBY COUNTY BAR ASSOCIATION.	Edmund Lockwood, Harlan.	Thos. H. Smith, Harlan.
BAR ASSOCIATION OF SIOUX CITY.	Craig L. Wright, Sioux City.	J. Herbert Quick, Sioux City.
VAN BUREN COUNTY BAR ASSOCIATION.	Alex. Brown, Keosauqua.	J. C. Calhoun, Keosauqua.
WAPELLO COUNTY BAR ASSOCIATION.	E. E. McElroy, (1900) Ottumwa.	Chas. Hall (1900), Ottumwa.
WASHINGTON COUNTY BAR ASSOCIATION.	W. M. Eicher, Washington.	C. J. Wilson, Washington.

KANSAS.

NAME.	PRESIDENT.	SECRETARY.
Bar Association of the State of Kansas.	B. F. Milton, Dodge City.	D. A. Valentine, Topeka.

KENTUCKY.

Kentucky State Bar Association.	C. U. McElroy, Bowling Green.	Bernard Flexner, Louisville.
KENTON COUNTY BAR ASSOCIATION.	Charles H. Fisk, Covington.	Charles A. J. Walker, Covington.
LOUISVILLE BAR ASSO- CIATION.	George W. Smith, Louisville.	E. L. McDonald, Louisville.
MURRAY BAR ASSOCIA- TION.	Conn Linn, Murray.	Charles Jetton, Murray.

LOUISIANA.

Louisiana Bar As- sociation.	Bernard McCloskey, New Orleans.	W. S. Benedict, New Orleans.
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MAINE.

Maine State Bar As- sociation.	Joseph W. Symonds, Portland.	Leslie C. Cornish, Augusta.
CUMBERLAND BAR ASSO- CIATION.	Henry B. Cleaves, Portland.	John F. A. Merrill, Portland.
FRANKLIN COUNTY BAR ASSOCIATION.	Henry L. Whitcomb, Farmington.	Byron M. Small, Farmington.
HANCOCK COUNTY BAR ASSOCIATION.	Eugene Hale, Ellsworth.	John B. Redman, Ellsworth.
KENNEBEC BAR ASSOCIA- TION.	Charles F. Johnson, Waterville.	C. L. Andrews, Augusta.
OXFORD BAR ASSOCIA- TION.	Vacant (1900).	C. F. Whitman (1900), S. Paris.
PENOBSCOT BAR ASSOCIA- TION.	Albert W. Paine, Bangor.	Frederick H. Appleton, Bangor.

MAINE—Continued.

NAME.	PRESIDENT.	SECRETARY.
SOMERSET BAR AND LAW LIBRARY ASSOCIATION.	O. R. Bachellor, (1901) Skowhegan.	Vacant.
YORK BAR ASSOCIATION.	Horace H. Burbank, Saco.	Gorham N. Weymouth, Biddeford.

MARYLAND.

Maryland State Bar Association.	Benj. A. Richmond, Cumberland.	Conway W. Sams, Baltimore.
BAR ASSOCIATION OF AL- LEGANY COUNTY.	William E. Walsh, Cumberland.	D. Lindley Sloan, Cumberland.
BAR ASSOCIATION OF BALTIMORE CITY.	John N. Steele, Baltimore.	James W. Bowers, Jr., Baltimore.
BAR ASSOCIATION OF GARRETT COUNTY.	Thos. J. Peddicord, (1901) Oakland.	Julius C. Renninger, (1901) Oakland.
BAR ASSOCIATION OF MONTGOMERY COUNTY.	Hattersly W. Talbott, Rockville.	Philip D. Laird, Rockville.
BAR ASSOCIATION OF PRINCE GEORGE'S CO.	George C. Merrick, Upper Marlboro.	Alan Bowie, Upper Marlboro.
BAR ASSOCIATION OF WASHINGTON COUNTY.	Alexander Neill, Hagerstown.	Martin L. Keedy, Hagerstown.

MASSACHUSETTS.

BAR ASSOCIATION OF THE CITY OF BOSTON.	Chas. P. Greenough, Boston.	William F. Wharton, Boston.
BERKSHIRE BAR ASSO- CIATION.	Henry W. Taft, Pittsfield.	Edward T. Slocum, Pittsfield.
ESSEX BAR ASSOCIATION.	Henry P. Moulton, Salem.	Alden P. White, Salem.
FALL RIVER BAR ASSO- CIATION	Milton Reed, Fall River.	Arthur S. Phillips, Fall River.

MASSACHUSETTS—Continued.

NAME.	PRESIDENT.	SECRETARY.
FRANKLIN COUNTY BAR ASSOCIATION.	Samuel O. Lamb, Greenfield.	Samuel D. Conant, Greenfield.
HAMPDEN BAR ASSOCIATION.	Charles L. Gardner, Springfield.	Robert O. Morris, Springfield.
HAMPSHIRE BAR ASSOCIATION.	Timothy G. Spaulding, Northampton.	Wm. H. Clapp, Northampton.
HAVERHILL BAR ASSOCIATION.	Harry J. Cole, Haverhill.	Charles E. Sawyer, Haverhill.
LAWRENCE BAR ASSOCIATION.	Chas. A. DeCoursey, (1901) Lawrence.	Wm. F. Moyes, (1901) Lawrence.
LYNN BAR ASSOCIATION.	William H. Niles, Lynn.	Charles Leighton, Lynn.
BAR ASSOCIATION OF THE COUNTY OF MIDDLESEX.	Samuel K. Hamilton, Boston.	Frank M. Forbush, Boston.
NEW BEDFORD BAR ASSOCIATION.	Charles W. Clifford, New Bedford.	Frank A. Milliken, New Bedford.
NEWBURYPORT BAR ASSOCIATION.	T. C. Simpson, Newburyport.	Edward H. Rowell, Newburyport.
BAR ASSOCIATION OF NORFOLK COUNTY.	Oscar A. Marden, Stoughton.	Charles F. Spear, Hyde Park.
PLYMOUTH COUNTY BAR ASSOCIATION.	Benjamin W. Harris, E. Bridgewater.	Arthur Lord, Plymouth.
TAUNTON BAR ASSOCIATION.	Henry J. Fuller, Taunton.	Carleton F. Sanford, Taunton.
WORCESTER COUNTY BAR ASSOCIATION.	F. P. Goulding, (1900) Worcester.	Webster Thayer, (1900) Worcester.

MICHIGAN

Michigan State Bar Association.	Adolph Sloman, Detroit.	William J. Landman, Grand Rapids.
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MICHIGAN—Continued.

NAME.	PRESIDENT.	SECRETARY.
BAY COUNTY BAR ASSOCIATION.	Edgar A. Cooley, Ann Arbor.	Frank S. Pratt, Bay City.
DETROIT BAR ASSOCIATION.	John C. Donelly, (1901) Detroit.	William J. Gray, (1901) Detroit.
GRAND RAPIDS BAR ASSOCIATION.	Thos. J. O'Brien, Grand Rapids,	Hugh E. Wilson, Grand Rapids.
HOUGHTON COUNTY BAR ASSOCIATION.	Thos. L. Chadbourne, (1901) Houghton.	William G. Rice, (1901) Houghton.
INGHAM COUNTY BAR ASSOCIATION.	Samuel L. Kilbourne, Lansing.	Harry A. Silsbee, Lansing.
IONIA COUNTY BAR ASSOCIATION.	Allen B. Morse, Ionia.	Wm. K. Clute, Ionia.
JACKSON COUNTY BAR ASSOCIATION.	Eugene Pringle, Jackson.	Benjamin Williams, Jackson.
LENAWEE COUNTY BAR ASSOCIATION.	Clement E. Weaver, Adrian.	Walter S. Westerman, Adrian.
MUSKEGON COUNTY BAR ASSOCIATION.	Hiram J. Hoyt, (1901) Muskegon.	James C. McLaughlin, (1901) Muskegon.
SAGINAW COUNTY BAR ASSOCIATION.	Eugene A. Snow, (1901) Saginaw.	Henry E. Naegeley, (1901) Saginaw.

MINNESOTA.

Minnesota State Bar Association.	Marshall B. Webber, Winona.	William R. Begg, St. Paul.
BLUE EARTH COUNTY BAR ASSOCIATION.	A. R. Pfair, Mankota.	Jean A. Flittie, Mankota.
MINNEAPOLIS BAR ASSOCIATION.	Willard R. Cray, Minneapolis.	John T. Baxter, Minneapolis.
RAMSEY COUNTY BAR ASSOCIATION.	John E. Stryker, St. Paul.	W. H. Yardley, St. Paul.

MINNESOTA—Continued.

NAME.	PRESIDENT.	SECRETARY.
RICE COUNTY BAR ASSOCIATION.	Geo. W. Batchelder, Faribault.	A. D. Keyes, Faribault.
SEVENTH JUDICIAL DISTRICT BAR ASSOCIATION.	John W. Mason, Fergus Falls.	Jas. R. Bennett, Jr., St. Cloud.
WINONA COUNTY BAR ASSOCIATION.	Thomas Simpson, Winona.	Wm. B. Anderson, Winona.

MISSISSIPPI.

ABERDEEN BAR ASSOCIATION.	E. O. Sykes, Aberdeen.	Q. O. Eckford, Aberdeen.
ADAMS COUNTY BAR ASSOCIATION.	Wm. C. Martin, Natchez.	James A. Clinton, Natchez.
COLUMBUS BAR ASSOCIATION.	J. A. Orr, (1901) Columbus.	Jas. T. Harrison, (1901) Columbus.
JEFFERSON COUNTY BAR ASSOCIATION.	R. W. Campbell, Fayette.	J. E. Torrey, Fayette.
YAZOO COUNTY BAR ASSOCIATION.	Robert Bowman, (1901) Yazoo City.	C. H. Williams, (1901) Yazoo City.

MISSOURI.

Missouri Bar Association.	W. M. Williams, Booneville.	Charles F. Gallenkamp, St. Louis.
KANSAS CITY BAR ASSOCIATION.	Samuel W. Moore, (1901) Kansas City.	Ellison A. Neel, (1901) Kansas City.
BAR ASSOCIATION OF ST. LOUIS.	Jacob Klein, (1901) St. Louis.	V. Mott Porter, (1901) St. Louis.

MONTANA.

Montana Bar Association.	William B. Rodgers, Anaconda.	Edward C. Russel, Helena.
CASCADE COUNTY BAR ASSOCIATION.	Thomas E. Brady, Great Falls.	H. H. Ewing, Great Falls.

MONTANA—Continued.

NAME.	PRESIDENT.	SECRETARY.
FLATHEAD COUNTY BAR ASSOCIATION.	G. H. Grubb, (1901) Kalispell.	D. F. Smith, (1901) Kalispell.
HELENA BAR ASSOCIATION.	F. P. Sterling, (1901) Helena.	Thos. J. Walsh, (1901) Helena.

NEBRASKA.

Nebraska State Bar Association.	Samuel P. Davidson, Tecumseh.	Roscoe Pound, Lincoln.
ADAMS COUNTY BAR ASSOCIATION.	John M. Ragan, Hastings.	J. S. Logan, Hastings.
LANCASTER COUNTY BAR ASSOCIATION.	Henry H. Wilson, Lincoln.	Stephen L. Geisthardt, Lincoln.
OMAHA BAR ASSOCIATION.	William F. Gurley, Omaha.	J. A. C. Kennedy, Omaha.

NEW HAMPSHIRE.

Bar Association of the State of New Hampshire.	Frank S. Streeter, Concord.	Arthur H. Chase, Concord.
BELKNAP COUNTY BAR ASSOCIATION.	Charles C. Rogers, Tilton.	Bertram Baisdell, Meredith.
CARROLL COUNTY BAR ASSOCIATION.	Josiah H. Hobbs, Madison.	A. M. Rumery, Ossipee.
GRAFTON AND COÖS BAR ASSOCIATION.	Chester B. Jordan, Lancaster.	Geo. F. Rich, Berlin.
STRAFFORD COUNTY BAR ASSOCIATION.	Daniel Hall, (1901) Dover.	Walter W. Scott, (1901) Dover.

NEW JERSEY.

New Jersey State Bar Association.	Robert H. McCarter, Newark.	Albert C. Wall, Jersey City.
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NEW JERSEY—Continued.

NAME.	PRESIDENT.	SECRETARY.
PROSECUTORS ASSOCIATION OF NEW JERSEY.	Peter W. Stagg, Hackensack.	Nelson Y. Dungan, Somerville.
ATLANTIC COUNTY BAR ASSOCIATION.	Robert H. Ingersoll, Atlantic City.	Wm. M. Clevenger, Atlantic City.
BERGEN COUNTY BAR ASSOCIATION.	Milton Damerest, Hackensack.	Abram DeBaun, Hackensack.
CAMDEN COUNTY BAR ASSOCIATION.	Benjamin D. Shreve, Camden.	John Meirs, Camden.
CUMBERLAND COUNTY BAR ASSOCIATION.	James J. Reeves, Bridgeton.	George Hampton, Bridgeton.
ESSEX COUNTY BAR ASSOCIATION.	William B. Guild, Newark.	Charles M. Myers, Newark.
BAR ASSOCIATION OF HUDSON COUNTY.	Charles W. Fuller, (1901) Jersey City.	Howard C. Griffiths, (1901) Jersey City.
MERCER COUNTY BAR ASSOCIATION.	Robert S. Woodruff, Trenton.	William R. Piper, Trenton.
MONMOUTH BAR ASSOCIATION.	Robt. Allen, Jr., (1901) Red Bank.	James Steen, (1901) Eatontown.
BAR ASSOCIATION OF PASSAIC COUNTY.	George S. Hilton, Paterson.	John R. Beam, Paterson.
SOMERSET COUNTY BAR ASSOCIATION.	James J. Bergen, Somerville.	Nelson Y. Dungan, Somerville.
UNION COUNTY BAR ASSOCIATION.	Frank Bergen, Elizabeth.	James C. Connolly, Elizabeth.

NEW MEXICO TERRITORY.

New Mexico Bar Association.	W. B. Childers, Albuquerque.	Edward L. Bartlett, Santa Fé.
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NEW YORK.

NAME.	PRESIDENT.	SECRETARY.
New York State Bar Association.	John G. Milburn, Buffalo.	Frederick E. Wadhams, Albany.
ALBANY COUNTY BAR ASSOCIATION.	William P. Rudd, Albany.	Jacob C. E. Scott, Albany.
AMSTERDAM BAR ASSOCIATION.	Charles S. Nisbet, V.P., Amsterdam.	Lawrence A. Serviss, Amsterdam.
BROOKLYN BAR ASSOCIATION.	James D. Bell, Brooklyn.	Albert L. Perry, Brooklyn.
ERIE COUNTY BAR ASSOCIATION.	Moses Shire, Buffalo.	James L. Quackenbush, Buffalo.
BAR ASSOCIATION OF THE CITY OF GLOVERSVILLE.	Nelson H. Anibal, Gloversville.	Jeremiah E. Wood, Gloversville.
ASS'N OF THE BAR OF THE CITY OF NEW YORK.	William G. Choate, New York.	Silas B. Brownell, New York.
ONONDAGA COUNTY BAR ASSOCIATION.	W. P. Goodelle, Syracuse.	Edward H. Burdick, Syracuse.
OSWEGO COUNTY BAR ASSOCIATION.	John C. Churchill, Oswego.	Frank J. McNamara, Oswego.
QUEENS COUNTY BAR ASSOCIATION.	Harrison S. Moore, Flushing.	Frederick N. Smith, Long Island City.
ROCHESTER BAR ASSOCIATION.	Charles M. Williams, Rochester.	James R. Davy, Rochester.
ROCKLAND COUNTY BAR ASSOCIATION.	Alonzo Wheeler, Haversham.	George A. Wyre, Nyack.
SCHENECTADY COUNTY BAR ASSOCIATION.	Samuel W. Jackson, Schenectady.	Marvin H. Strong, Schenectady.

NORTH CAROLINA.

North Carolina Bar Association.	Charles Price, Salisbury.	J. Crawford Biggs, Durham.
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NORTH DAKOTA.

NAME.	PRESIDENT.	SECRETARY.
Bar Association of North Dakota.	J. H. Bosard, Grand Forks.	W. H. Thomas, Leeds.
BARNES COUNTY BAR ASSOCIATION.	Herman Winterer, Valley City.	Martin Remmen, Valley City.
GRAND FORKS COUNTY BAR ASSOCIATION.	James H. Bosard, Grand Forks.	Tracy R. Bangs, Grand Forks.
BAR ASSOCIATION OF THE SECOND JUDICIAL DISTRICT OF NORTH DAKOTA.	John Burke, Devils Lake.	W. H. Thomas, Leeds.

OHIO.

Ohio State Bar Association.	S. S. Wheeler, Lima.	Smith W. Bennett, Columbus.
AKRON BAR ASSOCIATION.	Horatio T. Wilson, Akron.	Henry M. Hagelbarger, Akron.
ALLEN COUNTY BAR ASSOCIATION.	J. C. Ridenour, Lima.	W. L. Rogers, Lima.
ASHLAND COUNTY BAR ASSOCIATION.	H. L. McCray, Ashland.	E. H. Noel, Ashland.
ANGLAIZE COUNTY BAR ASSOCIATION.	L. N. Blume, Wapakoneta.	F. M. Horn, Wapakoneta.
BUTLER COUNTY BAR ASSOCIATION.	W. H. Harr, Hamilton.	P. B. Hally, Hamilton.
CARROLL COUNTY BAR ASSOCIATION.	Thomas Hayes, Carrollton.	W. C. DeFord, Carrollton.
LAW AND LIBRARY ASSOCIATION OF CHILLICOTHE.	John C. Entrakin, (1901) Chillicothe.	Frank P. Hinton, (1901) Chillicothe.
CINCINNATI BAR ASSOCIATION.	Moses F. Wilson, Cincinnati.	Daniel Wilson, Cincinnati.

OHIO—Continued.

NAME.	PRESIDENT.	SECRETARY.
CLARK COUNTY BAR AND LAW LIBRARY ASS'N.	James Johnson, Jr., Springfield.	J. M. Harner, Springfield.
CLEVELAND BAR ASSO- CIATION.	Frank N. Wilcox, Cleveland.	Thomas H. Bushnell, Cleveland.
SOUTHERN COLUMBIANA COUNTY BAR ASS'N.	P. M. Smith, Wellsville.	Walter B. Hill, East Liverpool.
CRAWFORD COUNTY BAR ASSOCIATION.	A. Wickham, Bucyrus.	Charles Schaber, Bucyrus.
DARKE COUNTY BAR AS- SOCIATION.	C. M. Anderson, Greenville.	S. V. Hartman, Greenville.
DELAWARE COUNTY BAR ASSOCIATION.	C. H. McElroy, Delaware.	E. F. Brandebury, Delaware.
FRANKLIN COUNTY BAR ASSOCIATION.	John G. McGuffey, Columbus.	Campbell M. Voorhees, Columbus.
HANCOCK COUNTY BAR ASSOCIATION.	Aaron Blackford, Findlay.	S. E. Hurin, Findlay.
HARRISON COUNTY BAR ASSOCIATION.	D. Cunningham, Cadiz.	W. J. Taggart, Cadiz.
HENRY COUNTY BAR ASSOCIATION.	Martin Knapp, Napoleon.	J. P. Ragan, Napoleon.
JEFFERSON COUNTY BAR ASSOCIATION.	E. E. Erskine, Steubenville.	W. C. Taylor, Steubenville.
KNOX COUNTY BAR AS- SOCIATION.	H. H. Greer, Mt. Vernon.	W. E. Grant, Mt. Vernon.
LAKE COUNTY BAR AS- SOCIATION.	I. N. Tuttle, Painesville.	E. F. Blakeley, Painesville.
LICKING COUNTY BAR ASSOCIATION.	J. M. Dennis, Newark.	Chas. W. Seward, Newark.

OHIO—Continued.

NAME.	PRESIDENT.	SECRETARY.
LORAIN COUNTY BAR ASSOCIATION.	Chas. W. Johnston, Elyria.	H. W. Ingersoll, Elyria.
LUCAS COUNTY BAR ASSOCIATION.	E. H. Rhoades, Toledo.	F. B. Willard, Toledo.
MAHONING COUNTY BAR ASSOCIATION.	Thos. W. Sanderson, Youngstown.	M. C. McNabb, Youngstown.
MARION COUNTY BAR ASSOCIATION.	W. Z. Davis, Marion.	W. E. Scofield, Marion.
MIAMI COUNTY BAR ASSOCIATION.	W. H. Jones, Piqua.	C. F. Grosvenor, Troy.
MONTGOMERY COUNTY BAR ASSOCIATION.	Harry L. Munger, Dayton.	Robert R. Nevin, Dayton.
PUTNAM COUNTY BAR ASSOCIATION.	J. J. Moore, Ottawa.	D. C. Long, Ottawa.
RICHLAND COUNTY BAR ASSOCIATION.	S. G. Cummings, Mansfield.	J. E. LaDow, Mansfield.
ROSS COUNTY BAR ASSOCIATION.	John C. Entrekin, Chillicothe.	F. P. Hinton, Chillicothe.
SANDUSKY COUNTY BAR ASSOCIATION.	T. P. Finefrock, Fremont.	Basil Meek, Fremont.
SCIOTA COUNTY BAR ASSOCIATION.	George O. Newman, Portsmouth.	Harry W. Miller, Portsmouth.
STARK COUNTY BAR ASSOCIATION.	J. H. Clark, Canton.	Atlee Pomerene, Canton.
TOLEDO BAR ASSOCIATION.	Isaac N. Huntsberger, (1901) Toledo.	H. W. Frazer, (1901) Toledo.
WARREN COUNTY BAR ASSOCIATION.	J. A. Runyan, Lebanon.	George W. Stanley, Lebanon.

OREGON.

NAME.	PRESIDENT.	SECRETARY.
Oregon Bar Association.	S. B. Huston, Portland.	A. F. Flegel, Portland.
CLACKAMAS COUNTY BAR ASSOCIATION.	Gordon E. Hayes, Oregon City.	W. S. M'Ren, Oregon City.
MARION COUNTY BAR ASSOCIATION.	B. F. Bonham, Salem.	A. O. Condit, Salem.

PENNSYLVANIA.

Pennsylvania Bar Association.	C. LaRue Munson, Williamsport.	William H. Staake, Philadelphia.
ADAMS COUNTY BAR AS- SOCIATION.	Wm. McClean, Gettysburg.	W. Clarence Sheely, Gettysburg.
ALLEGHENY COUNTY BAR ASSOCIATION.	Thomas Patterson, Pittsburg.	Albert York Smith, Pittsburg.
ARMSTRONG COUNTY BAR ASSOCIATION.	Rush Fullerton, Kittanning.	Floy C. Jones, Kittanning.
LAW ASSOCIATION OF BEAVER COUNTY	D. A. Nelson, Beaver.	W. A. McConnell, Beaver.
BERKS COUNTY BAR AS- SOCIATION.	Jacob S. Livengood, Reading.	Thomas K. Leidy, Reading.
BLAIR COUNTY BAR AS- SOCIATION.	Adie H. Stevens, (1901) Tyrone.	Henry A. McFadden, (1901) Hollidaysburg.
BRADFORD COUNTY BAR ASSOCIATION.	Rodney A. Mercur, Towanda.	Jas. R. Leahy, Towanda.
BUCKS COUNTY BAR AS- SOCIATION.	John L. DuBois, Doylestown.	Harvey S. Kiser, Doylestown.
BUTLER COUNTY BAR ASSOCIATION.	J. D. McJunkin, Butler.	J. D. Marshall, Butler.
CAMBRIA BAR ASSOCIA- TION.	W. Horace Rose, Johnstown.	H. H. Myers, Ebensburg.

PENNSYLVANIA—Continued.

NAME.	PRESIDENT.	SECRETARY.
CAMERON COUNTY BAR ASSOCIATION.	J. C. Johnson, Emporium.	C. W. Shaffer, Emporium.
CARBON COUNTY BAR ASSOCIATION.	Edw. H. Mulhearn, Mauch Chunk.	Frank P. Sharkey, Mauch Chunk.
CENTRE COUNTY BAR ASSOCIATION.	John G. Love, Bellefonte.	M. I. Gardner, Bellefonte.
CHESTER COUNTY LAW AND MISCELLANEOUS LIBRARY ASSOCIATION.	Wm. M. Hayes, West Chester.	Thomas Lack, West Chester.
CLARION BAR ASSOCIATION.	David Lawson, Clarion.	W. D. Burns, Clarion.
CLEARFIELD COUNTY LAW ASSOCIATION.	Cyrus Gordon, Clearfield.	Benjamin F. Chase, Clearfield.
CLEARFIELD LAW LIBRARY ASSOCIATION.	Cyrus Gordon, Clearfield.	Benjamin F. Chase, Clearfield.
COLUMBIA COUNTY BAR ASSOCIATION.	John G. Freeze, Bloomsburg.	George E. Elwell, Bloomsburg.
CRAWFORD COUNTY BAR ASSOCIATION.	James W. Smith, Meadville.	James R. Andrews, Meadville.
CUMBERLAND COUNTY BAR ASSOCIATION.	Robt. M. Henderson, Carlisle.	Conrad Hambleton, Carlisle.
DAUPHIN COUNTY BAR ASSOCIATION.	Robert Snodgrass, Harrisburg.	William M. Hargest, Harrisburg.
DELAWARE COUNTY LAW LIBRARY ASSOCIATION.	Geo. E. Darlington, Media.	Garnett Pendleton, Chester.
ELK COUNTY BAR ASSOCIATION.	Rufus Lucore, Ridgway.	Eugene H. Baird, Ridgway.
ERIE COUNTY BAR ASSOCIATION.	George A. Allen, Erie.	Henry E. Fish, Erie.
FAYETTE COUNTY BAR ASSOCIATION.	D. W. McDonald, Uniontown.	Joseph G. Carroll, Uniontown.

PENNSYLVANIA—Continued.

NAME.	PRESIDENT.	SECRETARY.
FOREST BAR ASSOCIATION.	Samuel D. Irwin, Tionesta.	T. H. Ritchey, Tionesta.
FRANKLIN COUNTY BAR ASSOCIATION.	D. Watson Rowe, Chambersburg.	Loren A. Culp, Chambersburg.
FULTON COUNTY BAR ASSOCIATION.	J. Nelson Sipes, McConnellsburg.	W. Scott Alexander, McConnellsburg.
HUNTINGDON BAR ASSOCIATION.	J. R. Simpson, Huntingdon.	Jas. S. Woods, Huntingdon.
INDIANA COUNTY LAW ASSOCIATION.	J. N. Banks, Indiana.	S. J. Telford, Indiana.
JEFFERSON COUNTY BAR ASSOCIATION.	W. F. Stewart, Brookville.	N. L. Strong, Brookville.
LACKAWANNA LAW AND LIBRARY ASSOCIATION.	Everett Warren, Scranton.	Herman Osthaus, Scranton.
LANCASTER BAR ASSOCIATION.	H. M. North, Columbia.	John W. Appel, Lancaster.
LAWRENCE COUNTY BAR ASSOCIATION.	J. Norman Martin, Newcastle.	D. N. Keast, Newcastle.
LEBANON COUNTY BAR ASSOCIATION.	Thomas H. Capp, Lebanon.	Charles M. Zerbe, Lebanon.
LEHIGH COUNTY BAR ASSOCIATION.	Arthur G. DeWalt, Allentown.	Frank Jacobs, Allentown.
LYCOMING LAW ASSOCIATION.	(Vacant.)	Addison Candor, Williamsport.
McKEAN COUNTY BAR ASSOCIATION.	Edward L. Keenan, Smethport.	Guy B. Mayo, Bradford.
MIFFLIN COUNTY BAR ASSOCIATION.	David M. Woods, Lewistown.	Michael M. McLaughlin, Lewistown.
MONTGOMERY COUNTY BAR ASSOCIATION.	James Boyd, Norristown.	Wm. F. Dannehower, Norristown.

PENNSYLVANIA—Continued.

NAME.	PRESIDENT.	SECRETARY.
NORTHAMPTON COUNTY BAR ASSOCIATION.	Russell C. Stewart, Easton.	Clarence E. Beck, Easton.
NORTHUMBERLAND COUNTY LAW ASSO- CIATION.	W. H. M. Oram, Shamokin.	H. S. Knight, Sunbury.
PERRY COUNTY BAR AS- SOCIATION.	W. M. Seibert, New Bloomfield.	J. M. Barnett, New Bloomfield.
LAW ASSOCIATION OF PHILADELPHIA.	Samuel Dickson, <i>Chancellor</i> , Philadelphia.	William C. Ferguson, Philadelphia.
LAWYERS' CLUB OF PHILADELPHIA.	Francis Shunk Brown, Philadelphia.	Emanuel Furth, Philadelphia.
POTTER COUNTY BAR AS- SOCIATION.	H. C. Dornan, Coudersport.	A. N. Crandall, Coudersport.
LAW ASSOCIATION OF SCHUYLKILL COUNTY	Guy E. Farquhar, <i>Chancellor</i> , Pottsville.	Edmund D. Smith, Pottsville.
SNYDER COUNTY BAR ASSOCIATION.	A. W. Potter, Selin's Grove.	Jay G. Weiser, Middleburg.
SULLIVAN COUNTY BAR ASSOCIATION.	Thomas J. Ingham, La Porte.	W. P. Shoemaker, La Porte.
SUSQUEHANNA COUNTY LEGAL ASSOCIATION.	William Post, Montrose.	H. A. Denney, Montrose.
TIOGA COUNTY BAR AS- SOCIATION.	S. F. Channell, Wellsboro.	R. K. Young, Wellsboro.
UNION COUNTY BAR AS- SOCIATION.	Andrew A. Leiser, (1901) Lewisburg.	W. R. Follmer, (1901) Lewisburg.
VENANGO COUNTY BAR ASSOCIATION.	James D. Hancock, Franklin.	N. F. Osmer, Franklin.
WARREN COUNTY BAR ASSOCIATION.	William E. Rice, Warren.	C. E. Bordwell, Warren.

PENNSYLVANIA—Continued.

NAME.	PRESIDENT.	SECRETARY.
WASHINGTON BAR ASSO- CIATION.	Alexander M. Todd, Washington.	Samuel Amspoker, Washington.
WAYNE BAR ASSOCIA- TION.	Henry Wilson, Honesdale.	R. M. Stocker, Honesdale.
WAYNESBURG LAW AS- SOCIATION.	J. B. Donley, Waynesburg.	James J. Purman, Waynesburg.
WESTMORELAND LAW ASSOCIATION.	D. S. Atkinson, Greensburg.	J. E. B. Cunningham, Greensburg.
WILKESBARRE LAW AND LIBRARY ASSO- CIATION.	Alex. Farnham, Wilkesbarre.	Joseph D. Coons, Wilkesbarre.
WYOMING COUNTY BAR ASSOCIATION.	W. E. Little, Tunkhannock.	E. J. Jorden, Tunkhannock.
YORK COUNTY BAR AS- SOCIATION.	Henry C. Niles, York.	Wm. L. Ammon, York.

RHODE ISLAND.

The Rhode Island Bar Association.	Francis Colwell, Providence.	Wm. A. Morgan, Providence.
PROVIDENCE BAR CLUB.	Dexter B. Potter, Providence.	Lorin M. Cook, Providence.

SOUTH CAROLINA.

South Carolina Bar Association.	C. A. Woods, Marion.	Hunter A. Gibbet, Columbia.
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SOUTH DAKOTA.

South Dakota Bar Association.	Thomas Sterling, Vermillion.	Jno. H. Voorhees, Sioux Falls.
BEADLE COUNTY BAR ASSOCIATION.	A. W. Burt, Huron.	(Appointed at meetings)
BROOKINGS COUNTY BAR ASSOCIATION.	George A. Mathews, (1901) Brookings.	John C. Jenkins, (1901) Brookings.

SOUTH DAKOTA—Continued.

NAME.	PRESIDENT.	SECRETARY.
BROWN COUNTY BAR ASSOCIATION.	J. H. Hauser, Aberdeen.	Charles M. Stevens. Aberdeen.
CLARK COUNTY BAR ASSOCIATION.	S. H. Elrod. Clark.	Wm. McGaan, Clark.
CODINGTON COUNTY BAR ASSOCIATION.	Wilbur S. Glass, (1901) Watertown.	R. T. Warner, (1901) Watertown.
DAVISON COUNTY BAR ASSOCIATION.	J. L. Hannett, Mitchell.	Herbert E. Hitchcock, Mitchell.
MINNEHAHA COUNTY BAR ASSOCIATION.	T. B. McMartin, (1900) Sioux Falls.	Jno. H. Voorhees, (1900) Sioux Falls.

TENNESSEE.

Bar Association of Tennessee.	R. E. L. Mountcastle, Morristown.	Robert Lurk, Memphis.
CHATTANOOGA BAR AND LAW LIBRARY ASSOCIATION.	A. W. Gaines, Chattanooga.	C. W. Rankin, Chattanooga.
FRANKLIN COUNTY BAR ASSOCIATION.	George E. Banks, Winchester.	Dick Taylor, Winchester.
LEWISBURG BAR ASSOCIATION.	J. L. Marshall, Lewisburg.	W. M. Carter, Lewisburg.
MEMPHIS BAR AND LAW LIBRARY ASSOCIATION.	Wm. M. Randolph, Memphis.	E. A. Cole, Memphis.
MURFREESBORO BAR ASSOCIATION.	John E. Richardson, Murfreesboro.	Jesse W. Sparks, Murfreesboro.

TEXAS.

Texas Bar Association.	Lewis R. Bryan, Houston.	A. E. Wilkinson, Austin.
AUSTIN BAR ASSOCIATION.	John Dowell, Austin.	J. W. Maxwell, Austin.

UTAH.

NAME.	PRESIDENT.	SECRETARY.
State Bar Association of Utah.	Chas. S. Varian, Salt Lake City.	Clesson S. Kinney, Salt Lake City.

VERMONT.

Vermont Bar Association.	John H. Seuter, Montpelier.	John H. Mimms, St. Albans.
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VIRGINIA.

Virginia State Bar Association.	Samuel C. Graham, Tazewell.	Eugene C. Massie, Richmond.
BAR ASSOCIATION OF THE CITY OF RICHMOND.	Beverley T. Crump, Richmond.	John Howard, Richmond.

WASHINGTON.

Washington State Bar Association.	R. G. Hudson, Tacoma.	Eugene G. Kreider, Olympia.
KING COUNTY BAR ASSOCIATION.	Orange Jacobs, Seattle.	John Arthur, Seattle.
PIERCE COUNTY BAR ASSOCIATION.	Theodore L. Stiles, Tacoma.	James M. Harris, Tacoma.
SKAGIT COUNTY BAR ASSOCIATION.	E. C. Million, Mt. Vernon.	E. P. Barker, Mt. Vernon.
SNOHOMISH COUNTY BAR ASSOCIATION.	H. D. Cooley, Everett.	E. W. Bundy, Everett.
BAR ASSOCIATION OF SPOKANE COUNTY.	A. G. Avery, Spokane.	Frederick W. Dewart, Spokane.
THURSTON COUNTY BAR ASSOCIATION.	Nathan S. Porter, Olympia.	Preston M. Troy, Olympia.
WALLA WALLA BAR ASSOCIATION.	John L. Sharpstein, Walla Walla.	Francis A. Garrecht, Walla Walla.
WHATCOM COUNTY BAR ASSOCIATION.	H. A. Fairchild, Whatcom.	Lin H. Hadley, Whatcom.
WHITMAN COUNTY BAR ASSOCIATION.	Robert L. McCroskey, Colfax.	Robert H. Kipp, Colfax.

850 LIST OF BAR ASSOCIATIONS IN THE UNITED STATES.

WEST VIRGINIA.

NAME.	PRESIDENT.	SECRETARY.
West Virginia Bar Association.	George E. Price, Charleston.	Nelson C. Hubbard, Wheeling.
MARION COUNTY BAR ASSOCIATION.	Wm. S. Haymond, Fairmount.	W. H. Conaway, Fairmount.
MASON COUNTY BAR ASSOCIATION.	W. R. Gunn, Point Pleasant.	E. J. Somerville, Point Pleasant.
MONONGALIA COUNTY BAR ASSOCIATION.	Joseph Moreland, (1901) Morgantown.	Edgar B. Stewart, (1901) Morgantown.
OHIO COUNTY BAR ASSOCIATION.	Geo. B. Caldwell, (1901) Wheeling.	Vacant. (1901)
WOOD COUNTY BAR ASSOCIATION.	C. D. Merrick, Parkersburg.	E. R. Kingsley, Parkersburg.

WISCONSIN.

State Bar Association of Wisconsin.	F. C. Winkler, Milwaukee.	Cornelius I. Haring, Milwaukee.
DANE COUNTY LEGAL ASSOCIATION.	J. H. Carpenter, Madison.	John A. Aylward, Madison.
EAU CLAIRE COUNTY BAR ASSOCIATION.	Ira B. Bradford, Augusta.	F. A. Farr, Eau Claire.
LA CROSSE BAR ASSOCIATION.	Benjamin F. Bryant, La Crosse.	John Brindley, La Crosse.
MILWAUKEE BAR ASSOCIATION.	Frederick C. Winkler, (1900) Milwaukee.	Cornelius I. Haring, (1900) Milwaukee.
ROCK COUNTY BAR ASSOCIATION.	William Smith, Janesville.	Emmett D. McGowan, Janesville.
WAUPACA COUNTY BAR ASSOCIATION.	F. M. Guernsey, Clintonville.	Irving P. Lord, Waupaca.
WINNEBAGO COUNTY BAR ASSOCIATION.	Charles Barber, Oshkosh.	A. J. Barber, Oshkosh.

MEMORANDUM OF SUBJECTS REFERRED TO COMMITTEES.

Commercial Law.

To advocate and urge certain Bankruptcy Legislation by Congress. (See pages 13 and 14.)

Obituaries.

To report names of Deceased Members. (See pages 14 and 419.)

Law Reporting and Digesting.

To report in reference to withholding from publication unimportant opinions. (See page 16 and following.)

Patent, Trade-Mark and Copyright Law.

To report a bill relating to Trade-Mark Registration. (See page 36.)

To report upon creation of Court of Patent Appeals and to report a bill if deemed advisable. (See page 37.)

SPECIAL COMMITTEES.

On Classification of the Law.

Committee continued. (See pages 23 and 425.)

On Indian Legislation.

No Formal Report in 1902. (See pages 23 and 476.)

On Uniform State Laws.

Uniform Legislation and Interstate Comity respecting Taxation. (See pages 18 and 19.)

Uniform Legislation respecting Forced Heirship, Limitation of Testamentary Disposition and Disallowance of Undue Influence as a ground of Annulment of Wills. (See page 19.) Committee continued. (See pages 24 and 477.)

On Federal Code of Criminal Procedure.

Committee continued. (See pages 25, 26, 31, 32 and 478.)

On Penal Laws and Prison Discipline.

To report on a resolution relating to establishment in the Department of Justice at Washington of a Laboratory for the Study of the Criminal, Pauper and Defective Classes. (See page 29.)

On Federal Courts.

To advocate passage of approved bill by Congress revising the Federal Judiciary System of Courts and Procedure. Committee continued. (See page 26.)

To prepare a bill increasing the number of Judges constituting each Circuit Court of Appeals from three to five. (See page 50.)

On Industrial Property and International Negotiation.

(See report made pages 23 and 486.)

On Title to Real Estate.

To urge Remedial Legislation. Committee continued. (See pages 23 and 496.)

On Louisiana Purchase Exposition.

To co-operate with Exposition authorities in promoting Congress of Lawyers and Jurists. Committee continued. (See pages 27 and 498.)

On Comparative Study of World Legislation.

To urge the Carnegie Institution to provide for co-operation with New York State Library for the study of Comparative Legislation. (See pages 28 and 33 to 36.)

ANNUAL ADDRESSES.

YEAR.	NAME.	SUBJECT.
1879.	EDWARD J. PHELPS,	John Marshall.
1880.	CORTLANDT PARKER,	Alexander Hamilton and William Paterson.
1881.	CLARKSON N. POTTER,	Roger Brooke Taney.
1882.	ALEXANDER R. LAWTON,	James Lewis Petigru and Hugh Swinton Legaré.
1883.	JOHN W. STEVENSON,	James Madison.
1884.	JOHN F. DILLON,	American Institutions and Laws.
1885.	GEORGE W. BIDDLE,	An Inquiry into the Proper Mode of Trial.
1886.	THOMAS J. SEMMES,	The Civil Law and Codification.
1887.	HENRY HITCHCOCK,	General Corporation Laws.
1888.	GEORGE HOADLY,	Codification.
1889.	SIMEON E. BALDWIN,	The Centenary of Modern Government.
1890.	JAMES C. CARTER,	The Ideal and the Actual in the Law.
1891.	ALFRED RUSSELL,	Avoidable Causes of Delay and Uncertainty in our Courts.
1892.	J. RANDOLPH TUCKER,	British Institutions and American Constitutions.
1893.	HENRY B. BROWN,	The Distribution of Property.
1894.	MOORFIELD STOREY,	The American Legislature.
1895.	WILLIAM H. TAFT,	Recent Criticism of the Federal Judiciary.
1896.	LORD RUSSELL OF KILLOWEN, Lord Chief Justice of England,	International Law and Arbitration.
1897.	JOHN W. GRIGGS,	Lawmaking.
1898.	JOSEPH H. CHOATE,	Trial by Jury.
1899.	WILLIAM LINDSAY,	Power of the United States to Acquire and Govern Foreign Territory.
1900.	GEORGE R. PECK,	The March of the Constitution.
1901.	CHARLES E. LITTLEFIELD,	The Insular Cases.
1902.	JOHN G. CARLISLE,	The Power of the United States to Acquire and Govern Territory.

PAPERS READ.

YEAR.	NAME.	SUBJECT.
1879.	CALVIN G. CHILD,	Shifting Uses, from the Standpoint of the Nineteenth Century.
1879.	HENRY HITCHCOCK,	The Inviolability of Telegrams.
1879.	GEORGE A. MERCER,	The Relationship of Law and National Spirit.
1880.	HENRY E. YOUNG,	Sunday Laws.
1880	GEORGE TUCKER BISPHAM, . .	Rights of Material Men and Em- ployees of Railroad Companies as against Mortgagees.
1880.	HENRY D. HYDE,	Extradition between the States.
1881.	THOMAS M. COOLEY,	The Recording Laws of the United States.
1881.	SAMUEL WAGNER,	The Advantages of a National Bankrupt Law.
1882.	GUSTAVE KOEBNER,	The Doctrine of Punitive Damages and its Effect on the Ethics of the Profession.
1882.	U. M. ROSE,	Titles of Statutes.
1882.	THOMAS J. SEMMES,	The Civil Law as Transplanted in Louisiana.
1883.	ROBERT G. STREET,	How far Questions of Public Pol- icy may enter into Judicial Decisions.
1883.	JOHN M. SHIRLEY,	The Future of our Profession.
1883.	SIMEON E. BALDWIN,	Preliminary Examinations in Criminal Proceedings.
1883.	SEYMOUR D. THOMPSON, . . .	Abuses of the Writ of Habeas Corpus.
1884.	ANDREW ALLISON,	The Rise and Probable Decline of Private Corporations in America.
1884.	M. DWIGHT COLLIER,	Stock Dividends and their Re- straint.
1884.	SIMON STERNE,	The Prevention of Defective and Slipshod Legislation.

YEAR.	NAME.	SUBJECT.
1885.	RICHARD M. VENABLE,	Partition of Powers between the Federal and State Governments.
1885.	REUBEN C. BENTON,	The Distinction between Legislative and Judicial Functions.
1885.	FRANCIS RAWLE,	Car Trust Securities.
1886.	JOHNSON T. PLATT,	The Opportunity for the Development of Jurisprudence in the United States.
1886.	WILLIAM P. WELLS,	The Dartmouth College Case and Private Corporations.
1886.	JOHN F. DILLON,	Law Reports and Law Reporting.
1887.	HENRY JACKSON,	Indemnity the Essence of Insurance; Causes and Consequences of Legislation qualifying this Principle.
1887.	JAMES K. EDSALL,	The Granger Cases and the Police Power.
1888.	J. RANDOLPH TUCKER,	Congressional Power over Inter-State Commerce.
1888.	J. M. WOOLWORTH,	Jurisprudence Considered as a Branch of the Social Science.
1889.	HENRY B. BROWN,	Judicial Independence.
1889.	WALTER B. HILL,	The Federal Judicial System.
1890.	HENRY C. TOMPKINS,	The Necessity for Uniformity in the Laws Governing Commercial Paper.
1890.	DWIGHT H. OLNSTEAD,	Land Transfer Reform.
1890.	JOHN F. DUNCOMBE,	Election Laws.
1891.	FREDERICK N. JUDSON,	Liberty of Contract under the Police Power.
1891.	W. B. HORNBLLOWER,	The Legal Status of the Indian.
1892.	JOHN W. CARY,	Limitations of the Legislative Power in Respect to Personal Rights and Private Property.
1892.	WILLIAM L. SNYDER,	The Problem of Uniform Legislation.
1893.	HENRY WADE ROGERS,	The Treaty-Making Power.
1893.	W. W. MCFARLAND,	The Evolution of Jurisprudence.

YEAR.	NAME.	SUBJECT.
1893.	U. M. ROSE,	Trusts and Strikes.
1894.	HAMPTON L. CARSON,	Great Dissenting Opinions.
1894.	CHARLES CLAFLIN ALLEN, . .	Injunction and Organized Labor.
1895.	WILLIAM WIRT HOWE,	Historical Relation of the Roman Law to the Law of England.
1895.	RICHARD WAYNE PARKER, . .	The Tyrannies of Free Govern- ment, or the Modern Scope of Constitutional Guarantees of Liberty and Property.
1896.	JAMES M. WOOLWORTH,	The Development of the Law of Contracts.
1896.	JOSEPH B. WARNER,	The Responsibilities of the Law- yer.
1896.	MONTAGUE CRACKANTHORPE, of the English Bar,	The Uses of Legal History.
1897.	ROBERT MATHER,	Constitutional Construction and the Commerce Clause.
1897.	EUGENE WAMBAUGH,	The Present Scope of Govern- ment.
1898.	LYMAN D. BREWSTER,	Uniform State Laws.
1898.	L. C. KRAUTHOFF,	Malice as an Ingredient of a Civil Cause of Action.
1899.	EDWARD Q. KEASBEY,	New Jersey and the Great Corpo- rations.
1899.	SIR WM. RANN KENNEDY, Judge of the English High Court,	The State Punishment of Crime.
1900.	EDWARD AVERY HARRIMAN, .	<i>Ultra Vires</i> Corporation Leases.
1900.	JOHN BASSETT MOORE,	A Hundred Years of American Diplomacy.
1900.	RICHARD M. VENABLE,	Growth or Evolution of Law.
1901.	RICHARD C. DALE,	Implied Limitations upon the Ex- ercise of the Legislative Power.
1901.	HENRY D. ESTABROOK,	The Lawyer, Hamilton.
1901.	CHARLES J. HUGHES, JR., . .	The Evolution of Mining Law.
1901.	PLATT ROGERS,	The Law of New Conditions— Illustrated by the Law of Irriga- tion.

YEAR.	NAME.	SUBJECT.
1902.	M. D. CHALMERS, Parliamentary Counsel to the Treasury (England),	Codification of Mercantile Law.
1902.	AMASA M. EATON,	The Origin of Municipal Incorporation in England and in the United States.
1902.	EMLIN McCLAIN,	The Evolution of the Judicial Opinion.

SECTION OF LEGAL EDUCATION.

YEAR.	NAME.	SUBJECT.
1893.	AUSTIN ABBOTT,	Existing Questions of Legal Education.
1893.	SAMUEL WILLISTON,	Legal Education.
1893.	EMLIN McCLAIN,	The Best Method of Using Cases in Teaching Law.
1894.	HENRY WADE ROGERS, Ch'rm'n,	Annual Address as Chairman.
1894.	JOHN F. DILLON,	The True Professional Ideal.
1894.	JOHN D. LAWSON,	Some Standards of Legal Education in the West.
1894.	SIMEON E. BALDWIN,	Law School Libraries, and How to Use Them.
1894.	WOODROW WILSON,	Legal Education of Undergraduates.
1894.	JOHN H. WIGMORE,	A Principal of Orthodox Legal Education.
1894.	EDMUND WETMORE,	Some of the Limitations and Requirements of Legal Education in the United States.
1894.	WILLIAM A. KEENER,	The Inductive Method in Legal Education.
1895.	JAMES B. THAYER,	Address as Chairman on The Teaching of English Law at Universities.
1895.	ERNEST W. HUFFCUT,	The Relation of the Law School to the University.
1895.	DAVID J. BREWER,	A Better Education the Great Need of the Profession.
1895.	LYMAN ABBOTT,	The Relation of Law to Our National Development.
1895.	NATHAN S. DAVIS,	The Importance of the Study of Medical Jurisprudence by Students of Law, and the Extent to which it should be Taught in Schools and Colleges for the Education of such Students.

PAPERS READ. SECTION OF LEGAL EDUCATION. 859

YEAR.	NAME.	SUBJECT.
1896.	EMLIN McCLAIN,	Address as Chairman, on The Law Curriculum.
1896.	CHARLES M. CAMPBELL, . . .	The Necessity and Importance of the Study of Common-Law Procedure in Legal Education.
1896.	BLEWETT LEE,	Teaching Practice in Law Schools.
1896.	JAMES FAIRBANKS COLBY, . . .	The Collegiate Study of Law.
1896.	AUSTEN G. FOX,	Two Years' Experience of the New York State Board of Law Examiners.
1896.	J. W. POWELL,	On Primitive Institutions.
1896.	JOHN RANDOLPH TUCKER, . . .	What is the Best Training for the American Bar of the Future.
1896.	GEORGE HENRY EMMOTT, . . .	Legal Education in England.
1897.	HENRY E. DAVIS,	Primitive Legal Conceptions in Relation to Modern Law.
1897.	JOHN A. FINCH,	The Law of Insurance in the Law School.
1897.	CHARLES NOBLE GREGORY, . .	The Wage of the Law Teachers.
1898.	SIMEON E. BALDWIN,	Address as Chairman, on The Re-Adjustment of the Collegiate to the Professional Course.
1898.	EDWARD A. HARRIMAN, . . .	Educational Franchises.
1898.	CHARLES W. NEEDHAM, . . .	Schools of Law: The Subjects, Order and Method of Study.
1899.	WILLIAM WIRT HOWE,	Address as Chairman, on The Study of Comparative Jurisprudence.
1899.	THOMAS BARCLAY,	The Teaching of the Law in France.
1899.	N. W. HOYLES, Q. C.	Legal Education in Canada.
1899.	JOSEPH WALTON, Q. C., . . .	Notes on the Early History of Legal Studies in England.
1900.	CHARLES NOBLE GREGORY, . .	Address as Chairman, on the State of Legal Education in the World.
1900.	HARRY B. HUTCHINS,	The Law School as a Factor in University Education.
1900.	WILLIAM DRAPER LEWIS, . .	The Proper Preparation for the Study of Law.

860 PAPERS READ. SECTION OF LEGAL EDUCATION.

YEAR.	NAME.	SUBJECT.
1901.	NATHAN ABBOTT,	The Undergraduate Study of Law.
1901.	CLARENCE D. ASHLEY,	Legal Education and Preparation Therefor.
1901.	RALEIGH C. MINOR,	The Graduating Examination in the Law School.
1901.	HARRY SANGER RICHARDS,	Shall Law Schools Give Credit for Office Study?
1901.	WILLIAM P. ROGERS,	Is Law a Field for Woman's Work?
1902.	ERNEST W. HUFFCUT,	A Decade of Progress in Legal Education.
1902.	HENRY S. REDFIELD,	A Defect in Legal Education.
1902.	FRANKLIN M. DANAHER,	Courses of Study for Law Clerks.

SECTION OF PATENT LAW.

YEAR.	NAME.	SUBJECT.
1895.	R. S. TAYLOR,	Patent Law and Practice.
1899.	JAMES H. RAYMOND,	Address as Chairman.
1899.	L. L. BOND,	Preliminary Injunctions.
1899.	FREDERICK P. FISH,	The Conditions under which Preliminary Injunctions in Patent Causes should be Granted or Refused.
1899.	E. B. SHERMAN,	Masters in Chancery.
1899.	ARTHUR STEUART,	What Constitutes Invention in the Sense of the Patent Law.
1899.	ROBERT S. TAYLOR,	Shall There be One or More Special Courts of Last Resort in Patent Causes.
1900.	FREDERICK P. FISH,	Address as Chairman.
1900.	LYSANDER HILL,	Unfair Competition in Trade.
1900.	ARTHUR STEUART,	Copyright for Design.
1902.	LESTER L. BOND,	Chairman's Address.
1902.	ARTHUR P. GREELEY,	Pending Trade-Mark Legislation.
1902.	ARTHUR STEUART,	Trade-Marks: Criminal Remedy.
1902.	LYSANDER HILL,	Preliminary Injunction in Patent Suits.
1902.	HAROLD BINNEY,	History and Present Status of the Law Relating to Designs.
1902.	ARTHUR S. BROWNE,	Patent Litigation from the Expert's Standpoint.
1902.	CHARLES MARTINDALE,	Evils of the Present System of Producing Evidence in Equity Causes and a Remedy Therefor.
1902.	MELVILLE CHURCH,	Is the Entire Jurisdiction of the Circuit Courts in the Matter of Suits for the Infringement of Patents Defined by the Act of March 3, 1897?

OFFICERS OF SECTIONS

1902-1903.

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